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ABSTRACT

Property taxes relate directly to rural education finance. This bulletin discusses differential tax assessment laws and the reasons states choose to institute them in 1970s. The first part of the report discusses the different types of tax laws and offers available evidence of their effects. More detailed summaries of individual state assessment laws are offered in the second section. (An addendum to the document shows the kind of state differential assessment law, if any, being used by each state as of January 1, 1977.) Differential assessment laws, currently used in 31 states, can be classified into three general categories: preferential assessment, deferred taxation, and restrictive agreements. A preferential assessment law, used in nine states, is one in which land is valued according to its current use. No penalty is exacted if the land is later converted to another use. A deferred tax law, used in 18 states, is also one in which land is taxed according to current use value, but a penalty is levied if the land use changes. A restrictive agreement, used in 10 states, occurs when the landowner and the local government agree to restrict use of the land in return for differential assessment. Assessment laws typically are instituted for one of two reasons: to reduce perceived inequities in the application of property tax to farms or to influence land use. The three assessment approaches defined here are compared, evaluated, and discussed in the context of the problems to which they respond. (TES)

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State Programs for the DIFFERENTIAL ASSESSMENT of FARM and OPEN SPACE LAND

AGRICULTURAL ECONOMIC REPORT NO. 253
ECONOMIC RESEARCH SERVICE
U.S. DEPARTMENT OF AGRICULTURE

ABSTRACT

Differential assessment laws are found in most States. Deferred tax laws are also common. Some States use preferential assessment laws or restrictive agreements. These laws typically are instituted for one of two reasons: to reduce what are perceived as inequities in the application of property ta... to farms, or to influence land use. These reasons are discussed in the publi... and summaries of individual State laws are provided.

Key words: Economic development, property taxes, local government

Washington, ... April ...

PREFACE

When the Economic Research Service report, Taxation of Farmland on the Rural-Urban Fringe (AER 119), was prepared in 1967, interest in this subject was widespread in the United States. The current volume of inquiries from citizens, State and local government officials, and others indicates continuing interest. This bulletin replaces the long out-of-date 1967 report.

The first part of this bulletin provides an overview of the types of laws and available evidence on their effects. This section will be most useful to the reader whose primary interests are in knowing about this type of legislation and the circumstances under which it might be useful. Many inquiries, however, come from individuals drafting new or revised laws in their States. They will find more detailed information about individual State laws in the latter part of the bulletin.

Most State summaries have been checked for accuracy by State officials or other individuals in a position to know about State tax laws. Their contributions are gratefully acknowledged. Acknowledgment is also due to Thomas F. Stinson who participated in development of the 1967 bulletin. Summarizing legislation of so many States is difficult; errors or omissions may have occurred. The authors will appreciate having these called to their attention.

Finally, a warning is appropriate. These summaries are not intended to substitute for copies of the State law and other official regulations. Taxpayers who want to know how the law in their State applies to their property are urged to consult State or local tax officials.

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HIGHLIGHTS

By November 1973, 31 States had enacted some form of differential or use-value assessment law as a modification of their real property tax code. Such laws are based on the valuation principle that certain eligible lands are valued for property tax purposes according to their value in their current use, rather than according to market value. Most typically, these laws apply to farmland, although many States have differential assessment for forest land, open space land, recreational land, or lands of unusual historical, scenic, or ecological importance.

These laws can be classified in three general categories: preferential assessment, deferred taxation, and restrictive agreements. Some States have combined these categories in provisions of their differential assessment law. For example, farmland may receive preferential assessment while open space land receives deferred taxation.

A preferential assessment law is one where land is valued according to its current use. Further, no penalty is exacted if it is later converted to another use. Nine States have preferential assessment laws.

A deferred tax law is one in which land is taxed according to current use value. But, when land use changes, a penalty tax is levied against the land or its owner. Eighteen States have such laws.

A restrictive agreement occurs when the landowner and the local government agree to restrict use of the land in return for differential assessment. Ten States use restrictive agreements, but six use them only for some lands and give preferential assessment or deferred taxation to other lands.

State definitions of agriculture vary widely. Some leave the meaning of "agricultural use" largely to the judgment of the local assessor. Others spell it out in more detail; details vary widely from State to State. Similarly, provisions for determining agricultural value vary from leaving the task largely to the judgment of the local assessor to rather detailed State programs.

These laws commonly are passed for one of two major reasons. The first is a feeling of the people in the State that the normal property tax discriminates against farmers. The second is a desire to influence land use such as preserving land in farming or other open space uses.

With no scientific measure of an equitable tax, the economist cannot say whether farm real estate taxes are unfair. Real estate taxes on U.S. farms take a larger proportion of the personal income of farm people now than 10 years ago. However, the property tax bill of the general U.S. population remains at about the same proportion of income as it was 10 years ago. On the other hand, total U.S. property taxes have grown slightly faster than farm property taxes over the same period.

Those considering differential assessment as a tool for influencing land use might well ask three questions:

(1) "What are we trying to do?" It is desirable to identify specific objectives to be met.

(2) "Can differential assessment do the job?" Evidence on effects of differential assessment in preserving land in farm or other open space uses is quite mixed.

(3) "Are there serious side effects?" Differential assessment is likely to raise tax bills of individuals who do not receive differential assessment. Further, it may complicate the assessment process.

STATE PROGRAMS FOR THE DIFFERENTIAL ASSESSMENT OF FARM AND OPEN SPACE LAND

by

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INTRODUCTION

In the 16 years since Maryland enacted the first law in the United States providing for the differential assessment of farmland, such laws have spread to 31 States. Reasons for this rapid spread have not been studied in detail. But, one reason does seem clear--a general public reaction against the property tax.

The reaction to property taxes has also resulted in various forms of property tax benefits for the aged, poor, and other groups believed to have special need for tax relief.

Popularity of these laws also seems to stem from the tremendous upsurge of interest in ecology, open space, and similar problems as well as from the belief that these laws can help guide development.

This bulletin provides information on differential assessment laws and is aimed at public officials, community leaders, and private citizens who may be studying laws of this type. It discusses types of laws in use, experience with these laws, and things to be considered in deciding whether a differential assessment law--and what kind of law--would be useful in a particular State.

This report includes only those laws providing for assessment of farmland on a basis of its value in its current use, rather than "full," "true," or "market" value, as other property is usually assessed. Under these laws, the assessor commonly is instructed to consider only the earning power of the land in its present use (i.e., agriculture) and to ignore other potential uses, such as a housing subdivision which might soon be built.

Laws providing for classification of property, in which farmland is to be assessed at a specified percentage of market value, residences at another percentage, business property at a third percentage, and so forth, are not included. Also excluded are instances in which farmland is given some form of preferential assessment because of local custom even though the applicable statute states that assessment is to be on the basis of market value.

TYPES OF DIFFERENTIAL ASSESSMENT LAWS

The increasing number of differential assessment laws has made it increasingly difficult to classify them. But, there are three general types: preferential assessment, deferred taxation, and restrictive agreements. Some State programs include elements of more than one of these types. Hence, some States are listed in more than one group.

Preferential Assessment

Under the preferential assessment approach, land devoted to agricultural use is assessed on the basis of its value in that use. The owner pays no penalty if he decides the following year to put his property into nonfarm uses. The Delaware law is a good example. It says, in part, that "...the value of land, not less than five (5) acres in area, which is actively devoted to agricultural, horticultural or forest use and which has been so devoted for at least the two (2) successive years immediately preceding the tax year in issue, shall...be that value which such lands have for agricultural, horticultural or forest use." The law defines agricultural, horticultural, and forest uses and establishes procedures for determining value of land in those uses.[1]

State requirements for participating vary. Some States (like Delaware) require that land be in agricultural use for several years before it is eligible for preferential assessment; others require only that it be in agricultural use on the assessment date. Some States grant preferential assessment only if the landowner applies for it; others grant it to all agricultural land, whether or not the owner applies. Distinguishing characteristics of the preferential assessment approach, however, are that the local government has no choice but to grant the assessment if the landowner meets the requirements of the statute and there is no penalty if the landowner changes land use in future years.

Nine States now have preferential assessment laws: Arkansas, Colorado, Delaware, Florida, Indiana, Iowa, New Mexico, South Dakota, and Wyoming.

Deferred Taxation

Deferred taxation also provides for assessment according to value in current use, but it adds a charge when land is transferred out of farm use. In most cases, the assessor also records the value he would have placed on the property if there had been no deferred tax law. In others, he determines market value retroactively when land changes to a noneligible use. It is then easy to multiply by the tax rate and figure out the amount of taxes saved under the deferred tax provision. If the owner changes the land to some use which does not qualify under the law, a deferred tax is levied equal to the tax saving he received for several preceding years. Most States use 3 years. The difference between taxes actually paid and those which would have been paid without differential assessment is totaled for the last 3 years. The owner is expected to pay immediately. A few States, however, use longer terms and several also charge interest. A recent trend, particularly where States were modifying an existing preferential assessment law, has been to base the tax on the price when the land is sold, rather than the taxes foregone. The Connecticut and New Hampshire laws are examples.

A deferred tax provision removes some financial incentive for an individual who is holding land for relatively near-term urban use to apply for the differential assessment. He may save little money. The size of effect depends heavily on the amount of tax recaptured. For example, an individual who expects to hold a tract near a freeway interchange for 10 years and then build a large shopping center on it probably would not be much deterred by a typical tax deferral of 3 years. He could still save a substantial part of 7 years' taxes. In the typical State with no interest charges, even a 10-year deferral period would permit him to make money on the interest earnings on his annual tax "savings" from the time the taxes would have been levied until the time when he actually had to pay them because he built the shopping center.

Currently, 18 States have deferred tax laws: Alaska, Connecticut, Hawaii, Illinois, Kentucky, Maine, Maryland, Minnesota, Montana, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, Texas, Utah, and Virginia.

Landowners usually must apply to be covered by these laws. Local governments, however, ordinarily have no choice but to grant the tax deferral to any landowner who applies and whose property meets the statutory definitions of farm (or horticultural or forest, in some States) use. In Virginia, county boards have the option of adopting a tax deferral ordinance or not. Once they adopt the law, however, they must apply it to all qualified property if the owner applies.

Restrictive Agreements

Several States have laws permitting local governments to make agreements with landowners under which the landowners agree to restrict use of their land for a period of years in return for tax concessions. Typically, use of the land is initially restricted for 10 years, and either party must give several years' notice if he intends to change land use. After he gives notice, either the land reverts to standard taxation or some type of charges are imposed. If the owner changes land use without following the agreement, more serious penalties result. Usually, the State or local government has an option of granting restrictive agreements only in those areas where it wants to preserve open space. The distinction between restrictive agreements and deferred taxes is not always clear. In a few States, the penalty for violating the restrictive agreement is mild and the law might be viewed almost as a deferred tax.

In Hawaii, landowners may petition the State. If the State approves the petition, the landowner forfeits any right to change the use of his land for a minimum period of 10 years. If the owner fails to observe the restrictions on use of his land, he must pay all of the difference between the taxes that were paid and those that would have been paid under the higher use back to the time of the initial dedication, plus a 10 percent per year penalty.

California law provides for legally binding, voluntary contracts between landowners and local governments. Land uses are initially restricted for 10 years or more and agreements are automatically extended for another year on each anniversary. 1/ The assessor is required to assess on the basis of the legally permitted use.

1/ There are exceptions. See the discussion of the California law in part II of this bulletin.

Washington State law provides that the land must remain in the restricted use for at least 10 years. After the eighth year, the owner can give 2 years' notice of his desire to revert to the standard method of taxation. When the land reverts to standard taxation, 7 years' deferred taxes are collected, with interest. If the owner fails to give the required notice and changes the use of the land, deferred taxes with interest plus a 20 percent penalty are collected. A recent New York law permits 8-year automatically renewable agreements under certain circumstances.

Similar laws are on statute books of Maine, Pennsylvania, and Vermont but appear to have had little use. New Hampshire's recently enacted law will become effective in 1974. Florida has such a law for park, recreational, and open space land; Maryland has one for country clubs and woodland.

DEFINING PERMITTED USES

State laws vary widely in the land uses they permit under differential assessment. Some States restrict the program strictly to agriculture, or to agriculture and horticulture. Others extend the provisions to forest lands. Still others permit a variety of open space uses, including golf courses, wetlands, and other uses of scenic, recreational, or ecological value.

Definitions of agriculture also vary. Some laws leave the meaning of "agricultural use" largely to the judgment of the local assessor, sometimes with a local board to help him. Others attempt to spell it out in terms such as Oregon's: "...the current employment of land for the purpose of obtaining a profit in money by raising, harvesting, and selling crops or by the feeding, breeding, management, and sale of livestock, poultry..." A Maryland regulation provides 29 criteria which local assessors can use to judge whether land is in agricultural use.

Definitional problems become especially acute if the legislation attempts to distinguish between "bona fide farmers" and "speculators," and to give benefits to one and not the other. One approach to this problem is to require that some proportion of the landowner's income come from farming. Alaska, for example, requires the owner to derive at least one-fourth of his income from the farm use land. Frequently, there is a provision that the land must have been in agricultural use for a specified number of years before it is eligible. Minimum acreage, income, sales, revenue, and productivity criteria are sometimes used. In Florida, if the sales price of the land is more than three times its agricultural assessment, the law presumes that it is not in agricultural use unless the owner proves otherwise.

Another approach is to limit eligible owners. Minnesota requires that the farm either be the owner's homestead or have been in his family's possession for 7 years. A family farm corporation is eligible if all shareholders are related to each other within the third degree of kindred. North Carolina requires that the farm be individually owned and either be the owner's residence or have been owned by the owner's family for 7 years. Kentucky specifically excludes real property owned by a corporation organized for other than strictly agricultural or horticultural purposes.

Whether or not the land is being sufficiently and adequately cared for in accordance with accepted commercial agricultural practices such as fertilizing, liming, tilling, mowing, and reforesting is important in some States' criteria of agricultural use. Florida also considers whether the land is under lease, and the effective length, terms, and conditions of the lease in determining whether land is in agricultural use.

In some States, zoning of the land is important. Kentucky, for example, specifically denies deferred taxation to land "...where the owner or owners have petitioned for, and been granted, a zoning classification other than for agricultural or horticultural purposes..." In other States (New York and Oregon, for example), application procedures and other requirements are different for farms inside agricultural zones. In Hawaii, as we noted earlier, the differential assessment system is closely tied with other land use controls.

A few States have extended their differential assessment laws to include "open space" land not necessarily used in agriculture. For example, "open space land" in Connecticut is defined as that land "...including forest land and not excluding farmland, the preservation or restriction of the use of which would: (1) maintain and enhance the conservation of natural or scenic resources, (2) protect natural streams or water supply, (3) promote conservation of soils, wetlands, beaches or tidal marshes, (4) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open spaces, (5) enhance public recreation opportunities, (6) preserve historic sites, or (7) promote orderly urban or suburban development." Municipal planning commissions are empowered to designate areas for preservation as open space land; the owner of land in such a zone can apply for designation as open space land if his land meets the definition.

Pennsylvania's open space land is defined to include farm, forest, and water supply land where the amount of land covered by buildings, roads, and other paved areas does not exceed 3 percent of the site, in addition to other criteria.

DETERMINING AGRICULTURAL VALUE

Provisions for defining the standard of value to be used for land which is given differential assessment vary considerably. Some States merely provide that lands in agricultural use shall, as in Arkansas, "...be assessed for ad valorem tax purposes on the basis of such current use, and shall not be assessed as if subdivided or on any other basis." Or, as in Illinois, the assessment is determined "...on the basis of its [land's] fair cash value, estimated at the price it would bring in a fair, voluntary sale for use by the buyer for farming or agricultural purposes." Other States are more specific. Oregon permits use of comparable sales (market value), but only if those sales are carefully examined and found to be "...under conditions that justify the purchase of such agricultural land by a prudent investor for farm use." In the absence of usable comparable sales figures, Oregon assessors are to use a capitalization approach. Minnesota assessors are to consider earning potential as measured by the free market rental rate.

The California law is a good example of the use of income capitalization. It provides guidelines for determining what is income. It also provides for the State to set a capitalization rate based on an interest component, a risk component, a property tax component, and, where appropriate, a component for the amortization of an investment in perennial crops. The capitalization formula is to be applied by local assessors.

New Jersey and some other States provide advisory values for various types of farmland. The State tax department or a committee created especially for the purpose provides recommended values each year for land in various capability classes. Local assessors then determine the capabilities of the land and apply the value. In New Jersey, for example, a State Farmland Evaluation Advisory Committee annually determines a range of values for each of the classifications of land in agricultural use. While the advisory committee recommendations are not binding on local assessors, they have generally been followed. 2/

In a similar program, Maryland has grouped soils into five categories. Three of these are cultivable soil; soil classes were determined on the basis of corn yields. Values were then found by capitalizing the earnings of land when used on corn production under "average" management practices. Two other categories include forest and woodland soils and wasteland.

STATE OBJECTIVES IN PASSING DIFFERENTIAL ASSESSMENT LAWS

Objectives in passing differential assessment laws probably have been somewhat different in each State. But, they generally fall into two categories: improving equity and influencing development.

The equity argument basically says that farmers pay too much property tax. In its most common form, it holds that farmers' property holdings are quite large in comparison with their incomes, and that therefore their property tax payments are too large relative to income. This is an application of the "ability to pay" criterion for distributing government costs.

Another variation is to use the "benefits received" criterion. The argument is that farmers pay property taxes entirely out of proportion to their government services. This is particularly true, it is argued, on the rural-urban fringe where residents of new housing subdivisions need many government services not as necessary when the area was all farmland.

Still another variation of the equity argument is that high property taxes unfairly force farmers to sell just at the time when land which has been in the family for a long time is becoming valuable. An unspoken assumption in this argument must be that it is difficult for a farmer to borrow money to pay the taxes until he is ready to sell (although if the land has been in the family for a long time he must have a substantial equity) or else that it is unfair to make him borrow to pay costs of holding the land until he can realize his full profit.

2/ Samuel Garrison, "Problems and Impact of the New Jersey Farmland Assessment Act of 1964," in Proceedings of the Seminar on Taxation of Agricultural and Other Open Land, April 1-2, 1971, Michigan State University, p. 42.

The second group of arguments revolve around the need to influence land use and the pace and direction of development. These arguments have received a major impetus recently with the upsurge of public interest in ecology and the environment. It is argued that farms provide fresh food and horticultural specialties for nearby urban areas. They provide open space which may be valuable to society simply as scenery or to provide spacing between other types of development ("greenbelts," for example), or as wildlife habitat, water recharge areas, or for any of a variety of other purposes. Some States have also extended differential assessment to other types of open space land which may be useful for purposes such as recreation.

Succeeding sections of this bulletin look at each of these arguments and the potential role of differential assessment.

EVALUATING DIFFERENTIAL ASSESSMENT: THE EQUITY ARGUMENT

There is no scientific measure of an equitable tax; the economist cannot say whether farm real estate taxes are unfair. Even the process of providing data is seriously complicated because economists do not agree on who actually bears the final money burden of the taxes on real property in the United States. For example, it is fairly easy to find out how much tax is levied on an apartment building and paid by its owner. Economists call this the "impact" of the tax. It is much harder to say how much the owner is able to raise rents in his building by virtue of the fact that he and all the other owners of housing in the area must pay a property tax, and therefore how much of the tax is "shifted" to his tenants in higher rents. Economists refer to this final money burden as the "incidence" of the tax. Without these kinds of data, it is impossible to say just how much tax really is paid by various groups, and therefore, whether the farmer's payment is unusually high.

Nevertheless, data on the impact of these taxes are of some help. Real property taxes on U.S. farms in 1971 amounted to an estimated 7.6 percent of the personal income of the farm population, up from 5.7 percent in 1961. This compares with total property tax levied (real and personal) of 4.4 percent of personal income for the Nation as a whole in 1971 and 4.3 percent in 1961. 3/ The comparative rise in farm tax burdens is primarily due to changes in incomes. Property taxes have generally grown slightly faster in the last 10 years than have farm real estate taxes; all property taxes in the United States grew at a compound annual rate of 7.7 percent while taxes on farm property rose at a 7.3 percent rate.

Other evidence suggests that U.S. farm property already is assessed at a lower ratio of market value than is other property. The 1972 Census of Governments found that "acreage" (which includes farms) involved in a sample of sales during a 6-month period in 1971 were assessed at 22.2 percent of sales price.

3/ Farm tax data from Jerome Stam and Eleanor Courtney, Farm Real Estate Taxes, Recent Trends and Developments, RET-12, Economic Research Service, Dec. 1972. Data for all property calculated from U.S. Bureau of the Census, Governmental Finances in 1970-71, Series GS 71-No. 5, U.S. Govt. Printing Office, Washington, D.C., 1972, p. 20, and Governmental Finances in 1961, G-GF61-No. 2, U.S. Govt. Printing Office, Washington, D.C., 1962, p. 20.

This compared with 27.9 percent for vacant lots, 34.0 percent for residential property, and 34.1 percent for commercial and industrial property. This tendency has persisted for many years and it is as prevalent in States without differential assessment as in those with it. Hence, it seems unlikely that differential assessment laws are a major cause. Part of this variation may be due to a tendency to assess property in rural areas at lower ratios than property in urban areas. If all property in a given taxing jurisdiction is assessed at the same low ratio, and there is no State property tax, the tax rate on the assessed value will simply be higher but no one's taxes will be affected. Nevertheless, it seems doubtful that this factor can account for the substantial difference found in the 1967 Census. It appears most likely that the average piece of farm property already pays a smaller portion of the total property tax bill than it would pay if all property were assessed at the same fraction of market value.

These data suggest that the average farmer does pay a larger proportion of his income in property taxes than does the average nonfarmer. His situation in this respect has become worse in the last 10 years, but he apparently already gets some adjustment in the form of de facto differential assessment even in States where there are no differential assessment laws. Most U.S. citizens seem to feel that taxes should be at least proportional (taking the same fraction of income from everyone) if not progressive (taking higher fractions of income from those with higher incomes). If these assumptions are adopted, there is an apparent case for some type of property tax reform.

Students of taxation, however, commonly raise several objections. They argue that there are many other groups in society who pay property taxes out of proportion to their incomes. Hence, they say, if current income is the sole criterion by which tax payments should be distributed, we ought to do away with the property tax and replace it with a higher income tax. Alternatively, it is argued that current income is not the only determinant of ability to pay. A man with $15,000 annual income and a $40,000 house, all paid for, might be thought to have more ability to pay than a man with a $15,000 income and no assets beyond a $1,000 savings account. The property tax may be a substitute, albeit an imperfect one, for a tax on net worth.

Still others argue that it is irrelevant to consider the distribution of the burden of the property tax at all. They maintain that the only relevant data would be those on the distribution of the total Federal, State, and local tax load. Data are scanty on the distribution of all taxes among farmers and other citizens.

Perhaps the main conclusion to be drawn from this discussion is that there is no clear evidence to indicate whether or not differential assessment laws can be justified on a basis of promoting equity. If the people feel that farmers are forced to pay unfairly high property taxes, and that they deserve tax relief in proportion to the difference between the market value of their property and the value of that property in agricultural production, then a differential assessment law would appear to be justified. On the other hand, if they want to give tax relief on some other basis, another type of law may be more effective. For example, if the primary purpose is to give relief to those farmers whose property taxes exceed some proportion of their incomes (either farm income or total income) then perhaps some adaptation of the "circuit breaker" arrangement would be more effective. The circuit breaker, now in use

in a number of States for property tax relief of the elderly, provides relief in the form of a credit against income tax or a tax rebate for a specified portion of property taxes. 4/ The relief varies with the income of the taxpayer. At the time this bulletin was completed, at least two States (Michigan and Vermont) were actively considering circuit breaker arrangements for farmers.

EVALUATING DIFFERENTIAL ASSESSMENT: THE LAND USE ARGUMENT

Another view of differential assessment is as a tool for implementing a community plan for land use and development. There appears to be mounting concern for measures to influence land use toward what many people regard as socially more desirable uses. Particular attention centers on areas of critical environmental concern--wetlands and flood plains, lands around key facilities such as major airports and highway interchanges, large-scale developments, lands surrounding new communities, and land and developments of regional benefit. 5/ Many existing State differential assessment laws have been passed, at least in part, to preserve farm use of land. In this section of the report, we consider how to evaluate the potential usefulness of differential assessment in a State program to influence land use.

To evaluate these laws, citizens might want to ask three questions. First of all, they might want to try to decide what kinds of land use they are trying to promote--differential assessment may do some things better than others. The first question, then, is "What are we trying to do?"

Second, they might want to ask whether differential assessment can produce the results wanted. "Can differential assessment do the job?"

Third, nearly any program does some things it was not supposed to do, and sometimes a program must be rejected because these "side effects" are intolerable. The third question, then, is "Are there serious side effects?"

What Are We Trying to Do?

Differential assessment is often urged by advocates desiring to preserve farming or to preserve open space. Specifying objectives is a first step in analyzing a proposed new program.

One thing to avoid, however, is falling into semantic traps; the term "open space" can be one of those traps. It often leads people to think they have specified their objectives before they really have. They forget to ask

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4/ An analysis of how such a circuit breaker for farmers might work in one State can be found in Allyn Lockner and Han J. Kim, "Circuit Breakers on Farm-Property-Tax Overload: A Case Study," National Tax Journal, Vol. 26, No. 2, June 1973, pp. 233-240. Present State circuit breaker provisions for other taxpayers are summarized in Advisory Commission on Intergovernmental Relations, Financing Schools and Property Tax Relief - A State Responsibility, Report A-40, U.S. Govt. Printing Office, Washington, D.C., 1973, pp. 43-67.

5/ Council on Environmental Quality, Environmental Quality--1972, U.S. Govt. Printing Office, Washington, D.C., August 1972, pp. 133-136.

the question, "Open space for what?" Open space has many different meanings. There are many ways people can use land without buildings on it.

The desire for open space may really be the desire for recreational areas: parks, golf courses, and similar land uses. It may be desired to preserve areas with peculiar ecological values such as salt marshes. Sometimes open space seems to mean any low density land use other than a junkyard or a dump. Perhaps the purpose in that case is to preserve scenery or to force city expansion into certain patterns and densities.

The important thing is to specify the purpose for which the open space is to be preserved. Specifying the purpose will help indicate the particular kind of open space that is needed, and help suggest whether differential assessment or some other program might be most appropriate. For example, if open space is needed for recreation, perhaps consideration should be given to confining differential assessment to recreational areas. On the other hand, if the purpose is to channel urban development away from a given area, differential assessment might be made available for any "open space" use, but only in that area. If the purpose is to preserve lands with particular ecological values, programs might be designed to offer tax concessions or other subsidies to owners of that land, conditioned on their keeping the land in uses which are consistent with their role in the local ecology.

Can Differential Assessment Do the Job?

After objectives are firmly established, you have laid the basis to move on to the question whether differential assessment can help meet those objectives and, if so, what form of differential assessment would be best. The answers depend on a number of factors.

People own farmland for a wide variety of reasons. Some reasons make owners sensitive to changes in tax costs; others do not. Some farmers, for example, like farming better than anything else they might do. They would not quit even if they could make more money by selling out and taking a job in town. Other farmers are in the business because they like the life, but they would be perfectly willing to sell and take another job if it seemed likely to produce more income. Still others are simply carrying on farming operations as a convenient way of using the land while they wait for it to "ripen" for higher-density uses. Meanwhile, taxes increase their holding costs a little, but are not really important in their decisions.

Each of these groups will react differently to a change in property taxes; the effects of a differential assessment law will depend partly on how many of each kind are in the area. If the main motivation is speculation, expected changes in land values may completely outweigh any probable changes in taxes. Similarly, taxes are not likely to affect the farmer who is "wedded to his work, at least until they reach the point where he simply cannot feed his family on the income that is left. (The problem of whether such a tax system is equitable was considered in an earlier section.) The overall effects of differential assessment depend on how many of each of these types of farmers are in a given area. If there are many farmers who could be induced to change occupations or locations readily, changes in property tax level might significantly affect land use trends.

Another factor involved is value of the land for alternative uses. If the land is nearly as valuable in farming as for other uses, offers from potential nonfarm users will be at comparatively small premiums over farm values. Even though the tax saving from differential assessment is comparatively small, it might have the effect of keeping the land in farm use. But if that land would provide substantial profits in another use, the offers for it will be high. Even though the tax savings under differential assessment also will be large in this case, it is difficult to believe that they will loom very large in a landowner's thinking when he is offered 10 times, or more, the value of the land for farming.

Some evidence can be gleaned from the experience of States using differential assessment. The California State Board of Equalization reports that more than 9.5 million acres of land were included in the California differential assessment program in 1971--almost one quarter of the privately owned agricultural land in the State. They also estimate that the loss in tax base amounted to about $475 million. 6/ Carman and Polson, studying experience in California through 1969, found that "Early experience...shows that land placed in the program was below average value and probably in little immediate danger of being converted to nonagricultural use." 7/ Not only was the land of below average value, they indicate, but it was likely to be more than 10 miles from the nearest incorporated area. Owners of land near cities, the land most likely to be converted to urban uses, apparently were not as interested in differential assessment. This apparent lack of interest may be especially significant in view of the fact that the California law puts stringent limits backed by stiff penalties on the use of land which is placed under its provisions.

A New Jersey study surveyed 311 participants in that State's Farmland Assessment Act and found that 40 percent thought the Act was "...a positive influence enabling them to continue to farm." 8/ They also found that participants were more likely than nonparticipants to own livestock, which they considered a possible indication of serious, full-time farming, and received significantly larger proportions of their income from farming. A further finding was that "The Farmland Assessment Act was implemented more slowly in rural areas than in transitional zones." 9/ Taken alone, this last finding would appear to contradict the California experience that land under the Act was most likely to be in areas where its conversion to urban use was not likely anyhow. However, the study goes on to note that "In many rural areas the level of assessments based on market values were equal to or lower than the proposed productive values." In other words, there was no tax saving for many landowners in the more rural parts of the State. Another review of the New Jersey experience concludes that "From a land-use policy point of view, the Act has contributed substantially to the retention of some of its agricultural land resources, but only for the short run...The agricultural assessment program is only one

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6/ California State Board of Equalization, Annual Report, 1970-71.

7/ Hoy F. Carman and Jim G. Polson, "Tax Shifts Occurring as a Result of Differential Assessment of Farmland: California, 1968-69," National Tax Journal, Vol. 24, No. 4, December 1971, p. 449.

8/ A. Robert Koch, Harriet H. Morrill, and Arthur Hausamann, Implementation and Early Effects of the New Jersey Farmland Assessment Act, (New Brunswick, Rutgers, n.d.) Rutgers Expt. Sta. Bul. 830, p. 10.

9/ Ibid.

of the essential steps that must be taken if New Jersey agriculture is to be continued and preserved." 10/

Fellows, in a review of the experience in Connecticut, indicates that "If you will accept a judgment which consolidates the impressions of several public officials, we believe that by breaking the cycle of high market value-high assessments, great pressure has been removed from the farm and forestland owners...We also believe unique situations will arise where purchase offers will be irresistible. But this is what we expected. The framers of the Act have stated again and again that use-value assessment is not the answer but only one part of an answer to the rational development of an area." 11/

Ishee, studying Maryland, concludes that "The rate at which land was converted to nonfarm uses was slower in the last decade than in the previous decade. Whether or not the lower rate of conversion...resulted from the Farmland Assessment Law is debatable. However, if assessed valuations had continued to rise at the same rate as land prices and tax rates had remained the same, it is almost certain that more land would have been taken out of farmland." 12/

A study in Washington State, however, raises doubts whether land given special tax treatment in that State would have been likely to change use even without the tax subsidy. It concludes that "Applicants for open space taxation do not appear to be on the brink of massive land use changes. The high percentage of applicants who plan to keep their land in its current use for more than 15 years raises some doubt about the effectiveness of the program. This doubt is strengthened by the low percentage of applicants who said they would have to change land use if denied current use assessment." 13/ The State department of revenue has estimated that tax cuts on open space land will average 60 percent in 1973. 14/

The evidence on the effectiveness of differential assessment laws in preserving agriculture, then, is mixed. Some of the most direct evidence, that which analyzes whether the land placed under the law is located where it is likely to be converted to other uses, suggests that these laws are not very effective. But other evidence suggests that they may be. Nearly all studies seem to agree on one point: Differential assessment will not be effective in preserving agricultural or other open space uses by itself. It must be combined with a variety of other tools for influencing land use. (It should be noted that many of these other tools involve fairly strict controls over what have previously been regarded as private decisions, and they do not meet with ready public acceptance in many parts of the country.)

10/ Samuel Garrison, "Problems and Impact of the New Jersey Farmland Assessment Act of 1964," in Seminar on Taxation of Agricultural and Other Open Land, op. cit., p. 47.

11/ Irving F. Fellows, "The Impact of Public Act 490 on Agriculture and Open Space in Connecticut," in Seminar on Taxation of Agricultural and Other Open Land, op. cit., p. 52.

12/ Sidney Ishee, "The Maryland Farmland Use-Value Assessment Law," in Seminar on Taxation of Agricultural and Other Open Land, op. cit., p. 32.

13/ James C. Barron, Impacts of Open Space Taxation in Washington, Wash. Agr. Expt. Sta. Bul. 772, March 1973, p. 1.

14/ State of Washington, Department of Revenue, Third Biennial Report, 1972, p. 45.

If differential assessment laws should turn out to be quite effective in retarding conversion of farmland to urban uses, it may be doubly important that they be combined with other measures to plan and direct urban growth, as most studies seem to suggest. If tax benefits are made available in areas which are planned to become urban areas, they will restrict the availability of land in those areas and may encourage further "leap-frogging" of urban development, increase the cost of bringing essential public services to the growing population, handicap local planning efforts, and generally obstruct orderly development.

This evidence would seem to suggest that differential assessment as a tool for influencing development patterns is likely to be most useful if the State or local government responsible for planning has an option in granting special tax treatment. It can then combine the availability of this subsidy with other measures to produce incentives to reshape development into what it sees as more acceptable patterns.

Are There Serious Side Effects?

Laws seldom affect only the people we intend them to affect; this is particularly true of tax laws. Hence, it is important to inquire what effects these laws might have on people other than the farmers who benefit from lower taxes.

One major effect is likely to be to raise other people's tax bills. The property tax is the mainstay of local government finance in the United States. If assessments are reduced on one important class of property, local governments are likely to have to raise tax rates in order to make up the loss in revenue. The effect will be higher taxes on other property. The amount of increase will depend on the amount of farm property receiving the benefit and the amount by which the assessment is reduced on this property. Thus, it might be least in jurisdictions that were nearly all built up (and had little farm property left) and in jurisdictions that were far removed from urban pressures (where the difference between the market value of farmland and its value in agricultural production might be expected to be small).

Estimates have been made in a number of States of the amount of increase on other property. Carman and Polson found that removal of the differential assessment law in California--the Williamson Act--would cut countywide average taxes by 1.4 percent in one county and by less than 1 percent in the other 17 counties they studied. On the other hand, reductions in some individual school districts within those counties were larger. In one San Mateo County district, for example, they estimated that taxes on a house with a $20,000 market value would be cut by $32.85 if the Williamson Act were abolished. 15/ One study in New Jersey, based on assumptions about the proportion by which assessed values of farmland will be reduced, seems to suggest the same general conclusion; the average increase on other property is small, but it can be quite large in some taxing jurisdictions where farmland is an important element of the tax base and its market value is high relative to its estimated value in agricultural use. 16/ Another New Jersey study, however, found that "The Farmland Assessment Act

15/ Carman and Polson, op. cit., pp. 455-456.
16/ Garrison, op. cit., p. 46.

shifted approximately $48 million in taxes to nonfarmers in 1972. On average, this is a shift of $50 an acre, or about two-thirds of the potential agricultural property tax burden." 17/

A study by Ching and Frick in New Hampshire points out that the size of the tax base, the percent of the total tax base which farms (and open space) make up, the rate of participation in the differential assessment program, and the amount by which differential assessment actually reduces taxes for farmers (and open space owners) are all important in determining the extent to which differential assessment raises taxes of nonfarm property owners. Under deferred taxation, they point out, the shift is reduced as land moves out of the program and deferred taxes are collected. 18/ In a study of eight counties in Maryland, House found that, without differential assessment, the tax rate could have been cut in one county from $2.35 per $100 of assessed value to $2.08, a cut of more than 11 percent. On the other hand, the cut in another county would have amounted to only $0.02. 19/ An analysis by Fellows raises an additional point. If farmland has previously been assessed at a lower proportion of market value than has other property, the practical effect of the law may not be to shift any additional taxes to other property. 20/ The Census of Governments data quoted earlier suggest that this may often be the situation.

New York and California provide for State aid to local governments or school districts to partially reimburse the local jurisdictions for the revenue they lose when farmland or open space lands are differentially assessed and to finance the administrative costs of such a program.

New York provides assistance to tax jurisdictions within some agricultural districts. The amount paid is equal to one-half the revenue lost minus any roll-back taxes collected in that year. The legislature appropriates funds for this purpose. California also provides for State assistance under a complex formula.

Another side effect of these laws is to make property tax laws harder to administer and to comply with. In the first place, the assessor no longer has the test of sales on the open market to help him keep his assessments in line. Market sales include values for nonfarm uses, which the assessor is legally bound to ignore. State programs to provide averages for different types of land can help, but they are subject to all the exceptions which make values of specific properties deviate from averages. Assessors also object to the fact that they commonly must estimate two values--market value and value in agricultural use--if the State has a typical deferred tax.

17/ John Kolesar and Jaye Scholl, Misplaced Hopes, Misspent Millions, A Report on Farmland Assessments in New Jersey, The Center for Analysis of Public Issues, Princeton, N.J., 1972.

18/ C. T. K. Ching and G. E. Frick, The Effect of Use Value Assessment on Assessed Valuations and Tax Rates, Research Report No. 13, Institute of Natural and Environmental Resources, Agr. Expt. Sta., Univ. of N.H., Durham, June 1970.

19/ Peter W. House, Differential Assessment of Farmland Near Cities... Experience in Maryland Through 1965, ERS 358, Economic Research Service, 1967, p. 24.

20/ Fellows, op. cit., pp. 52-53.

A related problem for the assessor is that he often must make the judgments about which properties qualify for differential assessment and which do not. It apparently is very difficult to write a differential assessment law which will give the assessor a set of guidelines which he can apply mechanically to decide whether a given piece of property is a farm. He must exercise some judgment; he inevitably generates controversy when he does.

On the other hand, in some areas where differential assessment laws are not in effect, there appear to be strong pressures on local assessors to provide preference on an informal basis. At least the differential assessment laws bring these de facto preferences out in the open.

COMPARING THE THREE APPROACHES

Up to this point, preferential assessment, deferred taxation, and restrictive agreements have been considered together. However, there are some significant differences among them.

If the purpose of granting differential assessment is simply to cut taxes for farmers because it is felt that farmers' taxes are too high (the equity argument), then there appears to be little purpose in adopting the added complications of deferred taxation or restrictive agreements. Preferential assessment will do the job, although some other program such as a "circuit breaker" or a classified property tax might also be considered.

There is, however, one argument in favor of deferred taxes or restrictive agreements for equity purposes. A common objection to differential assessment laws has been that their benefits accrue to speculators as well as to individuals who are, according to some definitions, "bona fide farmers." It is difficult to define a bona fide farmer. Anyone who owns land on the rural-urban fringe is, by the force of circumstances, speculating. However, the distinction most people have in mind seems to be between the individual who holds the land primarily to earn current income from it and the individual who holds it primarily for value appreciation. A deferred tax (with a fairly long deferral period) or a restrictive agreement can help to identify those individuals who expect to convert their land to other uses in the fairly near term, and hence to increase the proportion of the benefits going to "bona fide farmers" and decrease the proportion going to "speculators."

On the other hand, if the purpose of the differential assessment law is to influence land use--to promote open space or influence urban growth--then the preferential assessment approach has serious limitations. It is available to anyone, whether the land he owns is in an area where the community at large wants to preserve farming or not. Furthermore, granting of preferential assessment this year puts no responsibilities on the owner to maintain his farm t next year.

Deferred taxation meets the second of these problems. Under a deferred tax, the landowner must pay a monetary penalty when he changes land use. The size of the penalty, and therefore the amount of the deterrant to changing, will depend in part on the number of years deferred taxes which the law requires. The typical period is 3 years, but some States have longer periods. Furthermore,

while most States do not do so, there is no reason why the availability of deferred taxes could not be tied to a planning procedure, and the deferred taxes made available only in areas where the community thought they should be.

Restrictive agreements are capable of being used to meet both objections. The agreement itself typically restricts use of the land, and has safeguards to insure that it is followed. Furthermore, States that have these laws often have tied them to a planning procedure, although evidence is too scanty to say whether the planning portion of the laws typically is implemented effectively.

Preferential assessment is likely to produce the greatest increase in other people's tax rates. It is probably the least effective, dollar for dollar, for controlling land use. As a result, if preferential assessment is used, a given degree of land use control will take a larger increase in tax rates on other property to make up the revenue lost. The choice between deferred taxes and restrictive agreements is more difficult; much depends on the particular law. It seems likely that the typical restrictive agreement will be more "cost effective"--provide more control for each dollar of revenue lost--than the typical deferred tax. In part, this stems from the fact that the typical deferred tax law uses only a 3-year deferral, whereas the typical restrictive agreement runs for 10 years. Too, the restrictive agreements generally impose more stringent penalties if the land use is changed. On the other hand, it seems possible to write a deferred tax law that would be at least as effective as the typical restrictive agreement laws now in use.

The deferred tax and restrictive agreements probably complicate life for the assessor more than does preferential assessment. On the other hand, restrictive agreements usually are made with individual property owners by the county board or other local governing body, and the assessor therefore does not have to exercise judgment as to which properties qualify.

States seem to have been moving away from preferential assessment laws in recent years. Most States that have enacted new differential assessment laws in the last few years have used deferred taxes. Furthermore, at least two States (Maryland and Connecticut) that have had preferential assessment laws for some time recently passed supplementary laws designed to collect additional tax revenue from land which has been granted preferential assessment and afterwards passes into other uses. Florida has had preferential assessment for farmland for a number of years. When it extended this program to outdoor recreation and parkland, however, it provided for restrictive agreements.

CONCLUSIONS

This review draws no conclusions about whether individual States should pass differential assessment laws or what kinds they should use. Such decisions are properly made by the citizens of the State involved.

It does, however, try to provide a framework to help those citizens make their decision. This framework suggests, first, that they consider the purposes for which they want some type of law. Typically, these purposes have revolved either around reducing taxes for farmers because farm taxes were felt to be unfair or around reducing taxes on farmland as a means of influencing the use

of that land. With that purpose firmly in mind, citizens can consider whether differential assessment has a proper place in their program, and what other effects it might have. This first part of the bulletin provides some observations on this subject, and the remainder contains detailed descriptions of the programs in various States.

SUMMARIES OF STATE LAWS

ALASKA

Alaska enacted a deferred tax law in 1967.

Eligibility

Farm use land "...means the use of land for raising, harvesting and marketing of crops, dairying and livestock management...The owner must be actively engaged in farming the land and must derive at least one-fourth of his yearly gross income from the farm use land" [Alaska Statutes, § 29.53.035 (c)]. The owner must apply to the borough (county) tax assessor each year he wants to secure a farm use assessment [§ 29.53.035 (b)].

Assessment

"Farm use lands will be assessed on the basis of full and true value for farm use" [§ 29.53.035 (a)]. Where possible, the tax assessor will also record land value as if it were valued for nonfarm use.

Change in Land Use

Should such farm use land subsequently be changed to another use, the owner will be liable for back taxes for the 2 preceding years. The amount due will be the difference between the tax paid based on a farm use assessment and the taxes which would have been paid based on a nonfarm use assessment [§ 29.53.035 (a)].

ARKANSAS

Arkansas enacted a preferential assessment law in 1969.

Eligibility

Farm, agricultural, and timber land actively employed in those respective uses is eligible for assessment based on current use [Arkansas Statutes Annotated, § 84-483]. The farmer, however, must apply to the county assessor for the use assessment [§ 84-484 (A)]. Determination of the eligibility of the land is made by the county board of equalization [§ 84-484 (B)].

Once land is classified under this act, it will continue to be so assessed provided the owner certifies its continued use as farm, agricultural, or timber land annually, until the land is withdrawn from farm, agricultural, or timber use [§ 84-484 (D)].

Valuation

All lands which are actively devoted to farm, agricultural, or timber use will be assessed for ad valorem tax purposes on the basis of such current use, and not as if subdivided or on any other basis [§ 84-483].

Change of Land Use

If the owner of such land should change its use from farm, agricultural, or timber use, he must notify the county assessor within 60 days [§ 84-484 (E)].

CALIFORNIA

The California farmland assessment law is of the contract type. Eligible farmers may enter into contracts with their city or county governments to restrict, for a period of at least 10 years, the use of their land to eligible agricultural and compatible open space uses. California law also provides for open space easements and scenic restrictions. In return, land is assessed according to capitalized income from its permitted use. Counties, cities, and school districts are reimbursed by the State in varying degrees for the tax revenue they lose.

The law, under which almost all of the restrictions making land eligible for use assessment are created, is known as the Williamson Act or the California Land Conservation Act of 1965. It has been amended frequently since its enactment. The most important amendments were made in 1969.

Farmland

Definitions

Agricultural commodity includes any plant and animal products produced for commercial purposes [Government Code, § 51201 (a)].

Agricultural use means using the land to produce an agricultural commodity for commercial purposes [§ 51201 (b)].

Prime agricultural land means any of the following: (1) land which is rated as class I or class II by the Soil Conservation Service; (2) land which is rated 80-100 on the Storie Index Rating; (3) land which supports livestock used for production of food and fiber if it has a minimum capacity of one animal unit per acre; (4) land planted with fruit or nut-bearing trees, vines, bushes, or crops which have a nonbearing period of less than 5 years and will normally

return at least $200 per acre each year; (5) land which has produced unprocessed agricultural plants with an annual gross value of not less than $200 per acre for 3 of the 5 previous years [§ 51201 (c)].

An agricultural preserve may be an area devoted to agricultural use, recreational use, open space use, compatible uses, or any combination of these [§ 51201 (d)].

Compatible use is any use determined by the city or county governing body to be compatible with agricultural, recreational, or open space use of land [§ 51201 (e)].

Recreational use is the use of land by the public with or without charge for camping, picnicking, hiking, boating, hunting, swimming, or other outdoor sports. Any fee charged must be reasonable and may not unduly limit use of the land [§ 51201 (i)].

Open space use includes land maintained so as to preserve its natural characteristics, beauty, or openness for the enjoyment of the public, protection of wildlife, or production of salt as long as the land is in any of the following uses for which definitions are also provided in this section: scenic highway corridor, wildlife habitat area, saltpond, managed wetland area, and submerged area [§ 51201 (o)].

Establishment of Agricultural Preserves

Agricultural preserves may be established by any city or county which has a general plan. The purpose of agricultural preserves is to designate the areas within which the city or county will be willing to enter into contracts, as defined in the next section. If land not under contract is included within the preserve, it must be restricted to compatible uses by zoning laws or other suitable means within 2 years [Government Code, Art. 2.5, § 51230-51233]. A proposal to establish an agricultural preserve must be submitted to the city or county planning commission for approval [§ 51234]. The city or county may later remove land from an agricultural preserve [§ 51236]. The annexation or incorporation of land in an agricultural preserve by a city does not affect the existence of the preserve except that the city then takes over the county's rights and responsibilities [§ 51235].

Contracts

Any city or county may enter into contracts with respect to eligible land in agricultural preserves. The purpose of such a contract is to limit the use of the land for at least 10 years to preserve its agricultural or other open space use. A contract may provide for restrictions, terms, conditions, payments, and fees more restrictive than or in addition to those required by the State enabling legislation [§ 51240]. It will prohibit uses of the land for purposes other than agriculture and uses compatible with agriculture [§ 51243]. When the contract lasts for at least 10 years but less than 20 years, it is automatically extended for another year at each anniversary date unless notice of

nonrenewal is given by either party shortly before the anniversary date [§ 51244]. Contracts for 20 years or more, however, may contain provisions for automatic extension only after expiration of up to 11 years of the contract term [§ 51244.5]. The contract will be binding on all successors in interest of the owner [§ 51243]. Once notice of nonrenewal has been given, then the existing contract will be in effect for the balance of the contract period [§ 51246].

Cancellation of Contract

The landowner may cancel a contract (as opposed to not renewing it) only if he can show the county board or city council that the cancellation is not inconsistent with the purpose of the act and that the cancellation is in the public interest. Existence of an opportunity for another use of the land or the uneconomic character of the existing agricultural use is not grounds for cancellation except under closely defined circumstances [§ 51282]. When cancellation is accomplished, the landowner will have to pay a cancellation fee equal to 12-1/2 percent of the full cash value of the land after it is free of the contractual restriction unless the fee is waived by the governing body with the approval of the secretary of the State resources agency [§ 51283]. In case the contract was entered into prior to March 1, 1971, and the county assessor subsequently changed the ratio of assessed to full cash value, the cancellation fee is one-half the previously announced assessment ratio times the full cash value [§ 51283 (b)]. Cancellation will not take place without a hearing [§ 51284].

Open Space Easements

Open space easements are created under a separate law [Government Code, Chap. 6.5, § 51051-51052]. In granting such an easement, the owner relinquishes to the public the right to construct improvements on the land except as limited by the grant. These grants may be accepted by a city or a county which has adopted a general plan. The easement and covenant may not run for a period of less than 20 years [§ 51053].

Eligibility of Land for Open Space Easements

No grant of an open space easement may be accepted by a city or county unless the appropriate governing body finds that: (a) the preservation of this open space is consistent with the general plan of the city or county, and is (b) for the enjoyment of scenic beauty, for use of natural resources, for recreation, or for production of food and fiber [§ 51056]. In order for the grant to be accepted, the city or county planning department must have reported that it is consistent with the general plan [§ 51057].

Impact of Easement

Once the open space easement has been granted, no building permit may be issued to allow the construction of a building which would violate the easement [§ 51058].

Abandonment of Easement

The government of a city or county may abandon an open space easement if it and the planning commission determine that maintenance of the easement is no longer in the public interest. Accordingly, just prior to approval of the abandonment resolution, the county assessor is to assess the open space land at 25 percent of the fair market value it would have if it were not covered by the easement, and the owner must pay 50 percent of the assessed value as a condition of abandoning the easement [§ 51061]. This payment can be waived under certain circumstances.

Scenic Restrictions

A third law under which land can be restricted in ways that entitle it to use assessment authorizes counties and cities to acquire interests in real properties "...in order to preserve, through limitation of their future use, open spaces and areas for public use and enjoyment" [§ 6950]. Use assessment is available to such properties only when the restriction has an initial term of at least 10 years [Revenue and Taxation Code, § 421].

Taxation

The constitution authorizes the legislature to define open space lands and to provide for their assessment on a basis that it determines to be consistent with their restriction and use when they are enforceably restricted to use for recreation, enjoyment of scenic beauty, natural resources, or production of food and fiber [Constitution, Art. XXVIII]. The enforceable restrictions to which this article applies now include: a Land Conservation Act contract, a Land Conservation Act agreement, a scenic restriction or an open space easement. No other types of restrictions on the use of land qualify the land for assessment on a basis other than market value [Revenue and Taxation Code, § 422].

Valuation of Land Subject to Open Space Restriction

In valuing land subject to an enforceable open space restriction, the county assessor must use the capitalization of income method and may not use sales data [§ 423].

Where sufficient rental information is available, the income will be the fair rent imputed to the land. The rent may be actually received by the owner or may be a rent typical of the area [§ 423 (a) (1)].

Where sufficient rental information is not available, the income will be what the land can be expected to yield under prudent management and subject to the enforceable restrictions. Income will be the difference between revenue and expenditures. A detailed method for determining revenue and expenditure is provided in the law [§ 423 (a) (2)].

A detailed method for determining an appropriate capitalization rate is also provided [§ 423 (b)]. It is based on an interest component equal to the yield on long-term U.S. government bonds, a risk component, a property tax component, and a component for amortization of an investment in perennials.

Nonrenewal of Contract

Where notice of nonrenewal of a Land Conservation Act contract has been given by the owner, or by the governing body without protest by the owner, or where the owner has failed to give notice of renewal when it was due for scenic restrictions and open space easements, the assessor will reassess the land, and will do so each year until the contract expires [§ 426 (a)]. He will determine the full cash value of the land as if it were not subject to enforceable restriction. He then will determine the restricted use value of the land by the capitalization of income method, subtract this capitalized value from the unrestricted full cash value, and discount the difference at the yield rate of long-term U.S. government bonds for the number of years remaining in the contract. This last value will be added to the value derived by capitalization of income, and the assessed value will be 25 percent of the total [§ 426 (b)]. The same procedure applies for the last 5 years of a contract which is expiring by reason of a notice of nonrenewal given by the owner or protested by him.

Open Space Payments to Cities, Counties, and School Districts

The State provides payments (called "subventions" in the statute) to cities, counties, and school districts to compensate them in varying degrees for revenues lost because of the reduced property taxes paid on open space lands assessed pursuant to Sections 423 and 423.5 of the Revenue and Taxation Code [Government Code, § 16140-16141].

School districts can receive their subventions directly from the State [§ 16148-16152] and indirectly (as can special districts) through their constituent cities and counties [§ 16145].

The amount of the subvention is limited in two ways. These will be discussed later.

Cities and Counties

The governing body of each county and city reports to the secretary of the resources agency, itemizing the number of acres of land it believes eligible for subventions. The secretary reviews the report and certifies the amount of the subvention to the controller [§ 16144]. He uses the following rates: (a) $3 for each acre of prime agricultural land in a city or within specific distances from a city, (b) $1.50 for all other prime agricultural land, and (c) $0.50 for all other land which is devoted to open space uses of statewide significance [§ 16142]. "Open space uses of statewide significance" means that the open space land either could be developed as prime agricultural land

or is of more than local importance for ecological, economic, educational, or other purposes [§ 16143].

School Districts

The assessor determines the "open space adjustment" for each school district in the county. This is the difference between the "adjusted assessed value" of all land in the district in the base year and the actual assessed value of all land in the district in the current year, excluding from both figures the assessed value of petroleum mineral rights. "Adjusted assessed value" is the actual assessed value of the land in the base year, exclusive of developed petroleum mineral rights, multiplied by the percentage by which the gross assessed value of all locally assessed land in the State outside municipalities changed in value (ignoring exemptions and deductions but including petroleum mineral rights) between the base year and the current year. The base year is the last year before differential assessment was applied to any land in the district. The State controller determines the statewide factors. If the local assessor was using an assessment ratio of less than 25 percent in the base year, then he must adjust his base year values to the 25 percent assessment ratio for subvention purposes [§ 16149].

The "open space adjustment" described above is multiplied by the amount by which the school district's tax rate exceeds the following: (a) $2.23 (per $100 assessed valuation) for an elementary school district, (b) $1.64 for a high school district, (c) $3.87 for a unified school district of grades K-12, and (d) $0.25 for a community college district [§ 16148]. The product of the "open space adjustment" and the excess tax rate will be the amount of the State subvention to the district [§ 16151].

Limitations

There is a limitation on subvention payments to cities and counties. For each property currently assessed as open space land pursuant to Section 423 or 423.5 of the Revenue and Taxation Code, the last assessment before it acquired an open space restriction (exclusive of the value of developed petroleum mineral rights) is multiplied by the statewide factor determined by the controller for school district subventions. The resulting figures for all restricted parcels in the city or county are added, and the sum is compared with the parcels' total current assessed value (exclusive of the value of developed petroleum mineral rights). The subvention for the current year cannot exceed the product of the current city or county tax rate times the amount of the aggregate decrease in assessed value thus computed [§ 16152].

The limitation on subventions to school districts is based on assessed value per pupil. No school district may receive aid if its actual assessed value per pupil is greater than the product of the "base year assessed value" per pupil and a ratio of the statewide current education expense per pupil to the statewide base year education expense per pupil. Nor may any school district receive more than specified amounts per acre of open space land (e.g., $1 per acre for a community college district receiving no State equalization aid) [§ 16150].

Moreover, the total amount of subventions which the State controller may disburse cannot exceed an appropriated amount (e.g., $22 million in 1973-74). If claims by local governments exceed this limit, then subventions will be reduced on a prorata per acre basis, beginning with nonprime lands, then prime lands, and finally school districts [§ 16153].

Revenue Factor Adjustment Tax

School districts with lands assessed under Section 423 or 423.5 of the Revenue and Taxation Code are authorized to levy a "revenue factor adjustment tax" which will produce an amount equal to (1) the tax rate for the district referred to in Section 16148 of the Government Code (see above) times the "open space adjustment" defined in Section 16149, minus (2) the difference between actual State aid (other than open space subventions) and the amount of such State aid the district would have received had its assessed value been equal to the adjusted assessed valuation described above. The revenue factor adjustment tax, however, may not exceed $.03 per $100 of assessed valuation [Education Code, § 20814.5].

COLORADO

Colorado enacted a preferential assessment law in 1967 and amended it in 1971 and 1973.

To be assessed as agricultural land, a parcel of land must be used presently and primarily to obtain profit by raising, harvesting, and selling crops or by the feeding, breeding, management, and sale of livestock, poultry, fur-bearing animals, honey bees, dairy stock, or their products, or for any other agricultural or horticultural use. The land must have been so used the preceding 2 years, and must also have been classified agricultural for the preceding 10 years [Colorado Revised Statutes, § 137-1-3 (6)].

The value of such agricultural land will be based on its earning or productive capacity during a reasonable period of time, capitalized at a rate of 11-1/2 percent [§ 137-1-3 (5)].

CONNECTICUT

Connecticut enacted a differential assessment law in 1963. In 1972, the law was substantially amended to authorize a conveyance tax. Such a tax is collected in most cases when land which has been differentially assessed is sold or is changed to a higher use. The conveyance tax is not a true deferred tax but a new tax. Nevertheless, the Connecticut law more closely resembles a deferred tax than preferential assessment or a contract or agreement, so we have classified it as a deferred tax law.

Definitions

Farmland means any tract or tracts of land, including woodland and wasteland, constituting a farm unit [General Statutes of Connecticut, § 12-107b].

Forest land means any tract of land of 25 acres or more having tree growth in such quantity and so spaced and maintained as to constitute a forest in the opinion of the State forester [§ 12-107b].

Open space land means land whose preservation would enhance the conservation of natural, historic, and scenic resources; protect natural streams, water supply, wetlands, beaches, and soils; enhance the value of parks, forests, and wildlife preserves; create recreational opportunities; and promote orderly urban growth [§ 12-107b].

Eligibility

An owner of farmland may apply to the municipal assessor for its assessment as farmland. The assessor will determine if the land is farmland following such criteria as: acreage, portion of acreage in actual farm use, productivity, gross income, nature and value of equipment used on the land, and the extent to which the tracts comprising the unit are contiguous [§ 12-107c].

An owner of forest land must apply to the State forester for designation as forest land. If the State forester determines the land is indeed forest land, he will notify the owner and the appropriate assessor. The landowner then will apply to his local assessor for classification and taxation as forest land [§ 12-107d]. At a future date, the State forester may review the status of land designated forest land on his own initiative or at the assessor's request.

Open space land must be recommended for preservation and designated open space by a municipality's planning commission or similar agency in its plan of development. The owner of such land must apply for its classification as open space land on the assessment list. If the assessor determines that the land has retained its open space character, he will grant the open space classification [§ 12-107e].

Valuation

The value of such agricultural, forest, or open space land will be based on its current use, without regard for neighborhood uses of a more intensive nature [§ 12-63].

Conveyance Tax

Any land which has been classified as farm, forest, or open space will be subject to a conveyance tax if sold within 10 years from initial acquisition or classification. The tax is imposed in addition to the realty transfer tax. Its base is the total sale price of the land. The rates of the conveyance tax are as follows: 10 percent if sold within the first year of ownership or of

classification, 9 percent if sold in the second year...and 1 percent if sold in the tenth year. No conveyance tax is due after the tenth year [Public Act 152, Laws of 1972, § 1, 5].

DELAWARE

Delaware enacted a preferential assessment law in 1968.

Definitions

Agricultural use means land devoted to the production for sale of plants and animals useful to man, such as: forage and sod crops, grains and feed crops, dairy animals and dairy products, poultry products, etc. [Delaware Code, § 8330 (c)].

Horticultural use means land devoted to the production for sale of fruits, vegetables, nursery, floral, and greenhouse products [§ 8330 (d)].

Forest use means land devoted to tree growth in such quantity and so spaced and maintained as to constitute in the opinion of the State forester a forest area [§ 8330 (e)].

Eligibility

Land must be at least 5 acres in area and have been actively devoted to agricultural, horticultural, or forest use for at least the 2 immediately preceding years; that is, gross sales must have averaged $500 per year for the 2 perceding years [§ 8330 (f)]. The landowner must apply [§ 8330 (g)].

Valuation

Once the application is approved, then the value of the land for tax purposes will be based on its use in agricultural, horticultural, or forest use [§ 8330 (h)]. This will be determined by evidence of land capability, the assessor's own knowledge, and the recommendations of the State farmland advisory committee. This committee will annually determine a range of values for each of the several classifications of land in agricultural, horticultural, and forest use in various regions of the State. The committee will use the soil survey data and other evidences of land value [§ 8330 (m)].

FLORIDA

Florida's constitution was amended in 1968 to provide that agricultural land may be classified by general law and assessed only on the basis of its character or use. The history of differential assessment in that State goes back much earlier. The first differential assessment law was enacted in 1959. It was most recently revised in 1972. The law now provides for preferential

assessment of farmland and restrictive covenants for taxation of outdoor recreational and park lands.

Farmland

Definitions

Bona fide agricultural purposes means good faith agricultural use of the land [Florida Statutes Annotated, § 193.461 (3) (b)].

Agricultural purposes include horticulture, floriculture, viticulture, pisciculture, and other specified uses [§ 193.461 (5)].

Eligibility

The landowner must apply to the county assessor yearly. The assessor can classify the land as agricultural, using the following factors: (1) the length of time the land has been so utilized; (2) whether the land use has been continuous; (3) the purchase price paid; (4) size, as it relates to specific agricultural use; (5) whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices; and (6) whether the land is under lease and the effective length, terms, and conditions of the lease [§ 193.461 (3) (b)]. The assessor will reclassify the following lands as nonagricultural if: (1) the land has been diverted from agricultural to a nonagricultural use; (2) the land is no longer utilized for agricultural purposes; (3) the land has been zoned to a nonagricultural use at the request of the owner subsequent to the enactment of this law; or (4) the owner has recorded a subdivision plat for the land subsequent to the enactment of this law [§ 193.461 (4) (a)]. Land may also be reclassified nonagricultural if there is contiguous urban development and the agricultural land interferes with orderly expansion of the community [§ 193.461 (4) (b)]. Moreover, if the sale price of a piece of agricultural land is three or more times the agricultural assessment, tax authorities are instructed to presume that the land is not in bona fide agricultural use, unless the owner provides evidence to the contrary.

Assessment

Once proper application has been made and granted, the assessor will assess the land considering the following factors: (1) size and quantity of the property; (2) the condition of the property; (3) the present market value of the land in agriculture; (4) the income produced from the land; (5) the present productivity of the land; and (6) the economic merchantability of the agricultural product [§ 193.461 (6)-(a)].

If the proper application has not been made or the approval not been granted, then the land shall be assessed as all other land [§ 193.461 (6) (b)].

Outdoor Recreational and Park Lands

Definitions and Eligibility

Some outdoor recreational purposes are boating, golfing, camping, swimming, and horseback riding, and historical, archaelogical, scenic, or scientific sites. A development right is the right of any owner to change the use of the land to anything but outdoor recreational or park purposes [§ 193.501 (6) (a), (b)].

Development Rights and Covenants

The owner in fee of any land which is used for outdoor recreational or park purposes may convey the development right of that land to the governing board of a county or he may covenant with the governing board of the county for a period of at least 10 years to keep that land for outdoor recreational or park purposes [§ 193.501 (1) (a), (b)]. Likewise, the county board is authorized to accept the development rights or establish such a covenant [§ 193.501 (2) (a), (b)].

Assessment

When the development rights have been conveyed or the land has been put under covenant, the land will be eligible for assessment according to its value in its present use. If a covenant extends for less then 10 years, the land will be assessed according to its market value [§ 193.011] as restricted by the covenant [§ 193.501 (3)]. During the life of the covenant, the landowner may not change the use of the land without the consent of the county governing board, who must first reconvey the development right to the owner or release the owner from the terms of the covenant. The reconveyance or release will be contingent upon the owner's payment of any deferred taxes. The amount of deferred tax will be equal to the difference between taxes which would have been paid had the land been assessed at its market value, and the taxes actually paid, plus 6 percent interest. The period of the deferred tax is the length of time the conveyance or the covenant was in effect [§ 193.501 (4)].

HAWAII

In 1961, Hawaii enacted a law concerning the tax assessment of agricultural land and revised it in 1967, 1969, and 1973. In 1969, similar laws were enacted for golf courses and for residences of taxpayers 60 years old or older. The differential assessment of farmland, golf courses, and some residences is only one of the provisions of Hawaii law which deals with land use, planning, zoning, and economic growth. This law is based on the dedication of land to these select uses and is classified in this report in the restrictive agreements category. The 1973 amendments extended differential assessment to agricultural lands which are not dedicated lands. In this case, deferred taxation is used.

Hawaii law provides for the establishment of a land use commission [Hawaii Revised Statutes, § 205-1], which is charged with classifying and setting

boundaries for all lands in the State according to the following categories: (1) urban districts, (2) rural districts, (3) agricultural districts, and (4) conservation districts [§ 205-2]. Zoning ordinances will be based on these land classifications [§ 205-5]. In establishing the boundaries of agricultural districts, the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation.

Agricultural districts include uses such as the cultivation of crops, orchards, forage and forestry; farming activities or uses related to animal husbandry, game, and fish propagation; services and uses accessory to the above activities including, but not limited to, living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises, and open area recreational facilities [§ 205-2]. Certain other compatible uses may be permitted by zoning ordinances [§ 205-5].

Rural districts include activities or uses as characterized by low density residential lots mixed with small farms [§ 205-2].

In determining the value of land other than land classified and used for agriculture, consideration is to be given to: selling prices and income (including such data on comparable property), productivity, nature of use (actual and potential), location, accessibility, etc. [§ 246-10 (f)]. Records are to be kept in each district to show the methods established to determine value [§ 246-10 (c)].

Dedicated Lands

The sections of the law applying to dedicated lands provide for differential assessment of farmland, livestock use land, golf courses, and residential land. An owner of an eligible parcel of land may dedicate his land to ranching, livestock use, agricultural use, golf course use, or residential use. The method for reducing taxes will depend on the number of years the dedication will be in effect.

Eligibility of Agricultural Land

Dedicated lands may be located in any of the four districts. If the agricultural land is in an urban district, it must currently be and substantially and continuously have been used for the cultivation of crops such as sugar cane, pineapple, truck crops, orchard crops, ornamental crops, or the like for the 5-year period preceding the dedication request [§ 246-12 (a)]. If the land is in an agricultural district, it may be dedicated for a 20-year period [§ 246-12 (a)].

The owner of land in agricultural or ranching use must petition the director of taxation, who will then have the State department of agriculture determine whether the land is reasonably well suited for its intended use, using such criteria as productivity ratings, ownership, size of operating unit, and present use of surrounding similar lands. The director of planning and

economic development will at the same time determine whether the intended use is in conflict with the overall development plan of the State. If the land is in an urban district, the director will further determine the economic feasibility of the intended use of the land. If the petition is approved, then the landowner forfeits the right to change the use of the land for the next 10 or 20 years. Should the land use district be changed to urban, then the agreement may be cancelled. Otherwise, notice of nonrenewal may be given after the ninth year for a 10-year dedication or the nineteenth year for a 20-year dedication with expiration to come 1 year after [§ 246-12].

Valuation of Agricultural Land

If the petition is accepted, and the land is located in an agricultural district and it is dedicated for 20 years, then the land will be taxed at 50 percent of its assessed value in such use [§ 246-12 (a)]. If, however, the land is dedicated for 10 years, then it will be taxed on its full assessed value in agricultural or ranching use [§ 246-12 (b)].

Failure to Observe Agreement

Should the owner fail to restrict use of the land in accordance with the agreement, then the special tax assessment will be cancelled retroactive to the date of the dedication. Deferred taxes equal to the difference between taxes actually paid and taxes which would have been paid had the land not been dedicated, plus a 10 percent per year penalty calculated from each year that taxes were deferred, will be collected. The State may use other remedies to enforce the agreement [§ 246-12 (d)].

Eligibility of Livestock Use Land

An owner of land within an urban district may dedicate his land for a specific livestock use such as feedlots, calf raising, and like operations in dairy, beef, swine, poultry, and aquaculture, but excluding grazing or pasturing, and have his land assessed in such use. The land must have been substantially and continuously in such use. It must also be compatible with surrounding uses [Act 175, Laws 1973, Section 3].

Eligibility of Golf Course Land

The owner of a golf course must petition the director of taxation to have his land dedicated to golf course use. As a precondition to his petition being granted, he must agree not to discriminate against an individual using the golf course because of the individual's race, sex, religion, color, or ancestry [§ 246-12.2 (2)]. Approval of the petition to dedicate the land will mean the owner will forfeit any right to change the use of the land for at least 10 years, automatically renewable indefinitely. The dedication petition may be cancelled by either party once 5 years' notice is given.

Valuation of Golf Course Land

If the petition is approved, then the golf course land will be assessed on the basis of its value as a golf course. Some factors to be considered are rental income, cost of development, sales price, and the effect of the value of the golf course on the value of surrounding land.

If the landowner changes the golf course use to another use, in violation of the restrictions, then the special tax assessment will be cancelled retroactive to the date of the petition up to a maximum of 10 years. The difference in the taxes actually paid and the taxes which would have been paid had the land been in the higher use plus 6 percent penalty will be due for each year up to the time limitation. The State may use other means to enforce the covenant [§ 246-12.2 (1) (A), (B), (C)].

Eligibility of Residential Land

An owner or lessor with a 10-year lease, who is 60 years of age or older, is eligible to dedicate his real property to residential use. The land must be 10,000 square feet, be in an urban district, be used for single-family residential use, and be used by the owner or lessor as his home. Only one parcel of land may be dedicated for residential use by any owner. The owner or lessor must apply to the director of taxation. If the petition is accepted, then the land use is limited to its current restricted use. The period of the restriction is for 10 years into the future. Either party may cancel after 5 years.

Valuation of Residential Land

If the petition is approved, then the land will be valued only according to its value as a residence.

Failure to restrict the land to its dedicated use will subject the owner to roll-back taxes plus an 8 percent penalty. The roll-back will be due from the date of the original petition. There is no maximum for the period of the roll-back [§ 246-12.3].

Deferred Taxes

Classification of Land

Land in each county will be classified according to its highest and best use as follows [§ 246-10 (d) (1)]:

Category I
- (A) improved residential
- (B) agricultural
- (C) conservation

Category II
- (D) unimproved residential
- (E) hotel and apartment

Category III
- (F) commercial

Category IV
- (G) industrial

In assigning land to one of these categories, the director of taxation will give major consideration to the land use commission's districting system (described above), the county planning and zoning ordinance, and use classifications in the State general plan [§ 246-10 (d) (2)].

Valuation

In determining the value of lands classified and used for agriculture, whether dedicated or not, the assessor will consider rent, productivity, nature of actual agricultural use, advantages or disadvantages of factors such as location, accessibility, transportation facilities, size, shape, topography, quality of soil, water privileges, availability of water and its cost, easements and appurtenances, and the opinions of persons who have special knowledge of land values [§ 246-10 (2) (f) (2)].

Deferred Taxes

When land has been assessed according to its agricultural use as provided immediately above, and the classification of the land is changed to urban or rural district, or the land is subdivided into parcels of 5 acres or less, then deferred taxes will be due. The time span of the deferred taxes will be from the year agricultural use assessment was first applied but will be no longer than 10 years. The amount of deferred taxes will be based on the difference between the assessed value at its highest and best use and its assessed value in agricultural use, at the tax rate applicable for the appropriate years. Deferred taxes will not be collected if the landowner dedicates his land within 1 year of a change in land use classification [§ 246-10 (2) (f) (3)].

IDAHO

In 1971, Idaho enacted a law which has a bearing on use assessment of farmland. It provides that actual and functional use will be a major consideration when determining the market value of commercial and agricultural land [Idaho Code, § 63-202].

ILLINOIS

Illinois amended its constitution in 1970 to allow the legislature to provide for deferred taxation. Interest, at 5 percent, is charged on the deferred tax.

Eligibility

Real property is considered used for farming or agricultural purposes if "...it is more than 10 acres in area and devoted primarily to the raising and harvesting of crops; to the feeding, breeding, and management of livestock... with the intention of securing substantial income from these activities." Land in Federal programs will count toward achieving eligibility. The land

must have been in farm use for 3 years prior to the filing of application for farm use assessment [Illinois Annotated Statutes, § 501a-1]. The person liable for taxes will file a verified application with the county assessor who will then determine if the application meets the requirements [§ 502a-2].

When the land assessed under this law is no longer used for farming, the person liable for taxes must so notify the assessor [§ 502a-2].

Method of Assessment

Assessment will be made on the basis of the price the land would bring at a fair voluntary sale for farm use [§ 501a-1]. The valuation so determined will be repeated every year that the owner applies and meets the eligibility criteria [§ 501a-3].

Deferred Taxes

When land is no longer used for farming purposes, the person liable for taxes will pay, for the preceding 3 years, the difference between taxes actually paid and taxes which would otherwise have been paid plus 5 percent interest [§ 501a-3].

INDIANA

Indiana enacted a preferential assessment law in 1961. The statute provides that land devoted to agricultural use will be assessed as agricultural land as long as it is in agricultural use. Agricultural use assessment does not apply to land purchased for industrial, commercial, or residential uses [Indiana Statutes Annotated, § 64-711b]. In valuing land used for agriculture, the county assessor will appoint a committee of five persons, at least two of whom are agricultural landowners in the county, to help determine land values. This will be known as the county land advisory committee. The indicators of value determined by this committee will be used as guides in determining value of agricultural land [§ 64-712].

IOWA

Iowa has a preferential assessment law, enacted in 1967 and amended in 1968 and 1969. It has an unusual limit on the rate of taxation of farmland within municipal boundaries.

Agricultural Land Within Corporate Limits

To be eligible under this provision, land must be within the limits of a municipal corporation, must be larger than 10 acres, and must be used in good faith for agricultural or horticultural purposes. It may not be taxed at a rate greater than one and one-fourth mills and then only for municipal street purposes [Iowa Code Annotated, § 404.15].

Assessment of Agricultural Land

In determining the actual value of agricultural property, the assessor will consider equally (1) the productivity and net earning capacity determined on the basis of agricultural use, capitalized at a rate considered by the State board of tax review to be a fair return on the investment, and (2) the fair and reasonable market value of such property based "...only on its current use and not on its potential value for other uses" [§ 441.21].

KENTUCKY

Kentucky has a deferred tax law for agricultural and horticultural land. The constitutional amendment authorizing the deferred taxation of land in agricultural or horticultural use was approved in 1969. In 1970, the general assembly enacted implementing legislation effective January 1, 1971.

Definitions

Agricultural land means a tract of land of at least 10 contiguous acres used to produce livestock, poultry, tobacco, timber, and other crops. The average gross income from the land must have been at least $1,000 per year for the 2 preceding years, or there must be evidence that it will average this amount. Payments for land which meets the requirements for State and Federal agricultural programs may be counted in the average gross income. Land devoted to growing timber for market is excluded from the gross income provision [Kentucky Revised Statutes, § 132.010 (7)].

Horticultural land means a tract of land of at least 5 contiguous acres commercially used for the cultivation of a garden or orchard or to raise fruits, vegetables, flowers, or ornamentals. The average gross income from these activities must have averaged $1,000 per year for the past 2 years, or there must be evidence that it will average this amount [§ 132.010 (8)].

Agricultural or horticultural value is determined by "...representative sale prices of comparable land purchased for agricultural or horticultural use with consideration being given to the purpose of purchase, such as farm expansion, improved accessibility and other like factors unduly influencing the sale price" [§ 132.010 (9)].

Eligibility

Land must have been in these uses for at least 5 successive years, and the property valuation administrator must have placed a value on the land greater than its agricultural or horticultural value [§ 132.450 (2) (a)]. Specifically excluded is land zoned for other than agricultural or horticultural use and land owned by a corporation organized for other than strictly agricultural or horticultural purposes [§ 132.450 (2) (b), (c)]. The landowner must apply [§ 132.450 (2) (a)].

Deferred Tax

When a change in land use occurs, the landowner must pay the amount of the deferred tax for the 2-year period preceding the change [§ 132.450 (f)]. The amount of a deferred tax is the difference between a tax based on agricultural or horticultural value and a tax based on fair cash value [§ 132.010 (9), (10)].

MAINE

Maine amended its constitution in 1970 enabling the legislature to enact laws pertaining to the current use assessment of farmland, timberland, open space land used for recreation or scenic beauty, and lands used for game and wildlife sanctuaries. A deferred tax law was enacted in 1971 to carry out the farmland and open space objectives of the amendment. The "Tree Growth Tax Law" was enacted in 1972 and amended in 1973 to do the same for forest land.

Farm and Open Space Land

Definitions

Farmland means any tract or tracts of land including woodland and wasteland making up a farm unit of at least 10 contiguous acres producing a gross income of at least $1,000 per year for 3 of the preceding 5 years [1971 Regular Session Laws, Chap. 548, Subchapter 11-B, § 586].

Open space lands include land in wildlife management areas and preserves and farmland, the preservation of which would preserve scenic resources, enhance public recreational opportunities, promote game management, or preserve wildlife.

Eligibility of Farmland

An owner of land may file an application with the municipal tax assessor or State tax assessor, as appropriate, who will determine whether such land is to be identified as farmland on the assessment list. The factors to be considered are: acreage, portion in actual farm use, productivity, gross income derived from the land, nature and value of equipment employed on the land, and extent to which the tracts of land are contiguous.

Eligibility of Open Space Land

The planning board of a municipality may prepare a comprehensive plan and designate land for preservation as open space land. An owner of land in an area so designated may then apply for this classification [§ 588].

Scenic Easements

A municipality may acquire scenic easements or development rights to preserve property in farm or open space use. The minimum term will be for 10 years [§ 589].

Maine

Valuation

The value of any land classified as farm or open space land will be based on its current use as determined by the State tax assessor. Municipal tax assessors may or may not use these values. If they do not, they must be prepared to explain their valuation system [§ 590].

Recapture Penalty

Any change in land use which disqualifies land for the above classifications shall cause a penalty to be assessed against the land. This penalty will be equal to the total amount of taxes which would have been paid had land been valued at its highest and best use, in each of the years it had the special classification, less all taxes which were paid, plus 8 percent annual interest.

The maximum time span of the recapture penalty for open space lands is 15 years; for farmland, 10 years [§ 591].

Limit on Acreage

A person may not apply for classification for more than 15,000 acres [§ 593].

Tree Growth Tax Law

Definition

Forest land means land used primarily for the growth of trees and forest products but does not mean the ledges, marshes, open swamps, bogs, water, and similar areas which may be found within forest lands [Maine Revised Statutes Annotated, § 573, sub-§ 3].

Eligibility

The provisions of this law have mandatory application to forest land of more than 500 acres. The owner or owners of forest land between 10 and 500 acres may apply [§ 574].

Valuation

The State tax assessor will determine the proportions of various tree species and various forest products for each forest type. He will need this figure to determine the "average annual net wood production rates" and "average stumpage values" for each forest type in each county [§ 576]. From the results of growth rate surveys are calculated the "average annual net wood production rates," which are reduced by 30 percent, the rate which supports sustained logging [§ 576]. The value of the "annual net wood production" for a forest type in a county is equal to the "average annual net wood production rate" per acre for a forest type, multiplied by the weighted average of the stumpage

values of all species in the type [§ 573, sub-§ 9]. This value of "annual net wood production" for each forest type in each county is capitalized at a 10 percent rate, to produce the 100 percent valuation figure used by assessors to value forest land [§ 576]. The assessor who is responsible for any eligible forest land will adjust the 100 percent valuation by the local assessment ratio to obtain the assessed value of the forest land.

Eligibility for State Aid

Following the first year the law is in effect, if the forest valuation scheme reduces the total assessed valuation of all land in a municipality by more than 10 percent, then the municipality will have a valid claim against the State to recover the lost taxes. Such claims will be presented to the State legislature next convening [§ 578, sub-§ 1]. However, for the first year of valuation under this act, in organized and unorganized areas, if the total assessed valuation has been reduced by more than 10 percent from the year before, then the forest valuation will be adjusted back so that the reduction is not more than 10 percent [§ 578, sub-§ 1-2].

Change in Land Use

The landowners must report any change in land use. If they fail to do so, the assessor will collect taxes which should have been paid, deferred taxes for up to the previous 5 years, plus 25 percent penalty on the deferred taxes.

If land is reclassified, at the owner's or assessor's initiative, then the owner has two alternative ways of paying taxes. In the first case, deferred taxes for up to 5 years will be due plus interest charged from the year the taxes were deferred. In the second case, the amount of tax due will be equal to the amount by which the fair market valuation exceeds the 100 percent forest use valuation, multiplied by 10 percent up to the year 1978, 20 percent up to the year 1983, and 30 percent thereafter [§ 581, 581-A, 581-B].

Forest Land Valuation Advisory Council

This council will be made up of the State forest commissioner, and a municipal officer, a forest landowner, and a citizen with a background in economics. It will advise the State tax assessor about administering this law.

MARYLAND

Maryland first enacted a preferential assessment law in 1956. A constitutional amendment was approved in 1960 after the courts had declared sections of the law unconstitutional.

The current law provides for a combination of preferential assessment, deferred taxation, and tax agreements for agricultural lands, woodlands, country club land, and land planned and zoned for satellite cities.

Agricultural Land

Definition and Eligibility

Definition and eligibility are to be determined by the State department of assessments and taxation. In determining whether lands which appear to be in farm use are in fact bona fide farms, it may use these criteria: (1) zoning applicable to the land, (2) present and past use of the land, and (3) productivity of the land [Annotated Code of Maryland, Art. 81, § 19 (b) (1)].

Valuation

Agricultural lands which meet the eligibility requirements will be assessed on the basis of their farm use and not as if subdivided [§ 19 (b) (1)].

Deferred Taxes

No land which has been assessed on the basis of agricultural use may be developed for nonagricultural use for a 3-year period after the last year the land was thus taxed, unless the owner pays an amount equal to twice the difference between the taxes based on agricultural value and the taxes based on full value in the year development begins. Building permits will not be issued until the assessor certifies these conditions have been met [§ 19 (b) (2) (i), (ii)].

Woodland

Definition and Eligibility

Land eligible for this program must be a tract of at least 5 acres. The owner may enter into an agreement with the department of forests and parks to place his land in the program of forest conservation and management [Art. 66C, § 411-1/2 (c)]. The time period and conditions of the agreement will be determined by the department.

Assessment of Woodland

As long as the land is under contract, its assessment for State, county, special tax district, and municipal taxes will not be increased [§ 411-1/2 (d)].

Deferred Taxes

When the contract time period lapses, or if all the timber is harvested, or if the tract is sold to a new owner, then the land will be reassessed. If the new valuation is greater than the old one, then the difference will be divided into a number of equal annual steps corresponding to the number of years the contract existed. Taxes will be due on the increases and will be calculated at the tax rates applicable to the particular years [§ 411-1/2 (f)].

Transferability of Contract

A buyer of land under contract may also acquire and assume the obligations of the contract. Under this condition, he will not have to pay deferred taxes at this time [§ 411-1/2 (h)].

Country Clubs

Definition and Eligibility

A country club is an area of land of at least 50 acres, "...on which is maintained a regular or championship golf course of nine holes or more and a clubhouse, and which has a dues paying membership..." of at least "...one hundred persons who pay dues averaging at least $50 annually per person. The use of the club will be restricted to members, their families and guests..." but the use of the club facilities by other than members and guests will not disqualify a club [Art. 81, § 19 (e) (4)].

Agreement

Country clubs and the State department of assessments and taxation may enter into uniform agreements to assess and tax the eligible land only on the basis of its use as a country club and not as if it were subdivided or used for any other purpose [§ 19 (e) (1), (2)]. The time period of the agreement will be for a minimum of 10 years and may be extended in increments of 5 years [§ 19 (e) (5), (7), (14)]. When the full cash valuation of the land is greater than the country club use valuation, then the assessor will record both valuations. If the property under agreement subsequently is sold or no longer meets the definition of country club before the expiration date of the agreement, then back taxes will be collected. The amount of taxes will be determined for each appropriate year by applying the tax rate against the difference between the two assessments and summing the taxes for each year. The time limit for deferred taxation is 10 years [§ 19 (e) (7)].

Planned Development Lands

Definition and Eligibility

Land to be assessed and taxed as planned development land must be in an area covered by a current master plan or otherwise designated as a satellite city or town. Such plans must be approved by the government planning or zoning agency having jurisdiction. It must also be zoned for the development approved in the master plan. The zoning classification must have a comprehensive site development plan considering land use, utility requirements, highway needs, water and sewers, industrial use, job opportunities, recreation, and civic life. The owners of the land so zoned must pay for streets, open spaces, parks, school sites, and other property needed for public use. The tract of land must be contiguous and be at least 500 acres in size. At the time of zoning, the land

must be primarily undeveloped. The owner must apply [Art. 81, § 19 (f) (1), (2), (3)].

Assessment

If the assessor approves the application, then the land will be assessed at a rate equal to the rate applied to lands in agricultural use, regardless of whether it meets the criteria for agricultural use assessment [§ 19 (f) (3)]. If the full cash value assessment is greater than the special assessment, then the assessor will record both valuations.

Change in Land Use

When a portion of land under this special assessment is subdivided by the recording of a subdivision plat or permanent buildings are constructed on it, then that portion of the land will subsequently be taxed according to its full cash value. The rest of the undeveloped land will continue to receive the special assessment, even if it is less than 500 acres [§ 19 (f) (5)]. However, if the owner should initiate a rezoning classification that is not approved in the master plan, then the special assessment will terminate and back taxes will be collected. The amount of back taxes will be equal to the difference between the taxes which would have been paid based on full cash value assessment and the taxes actually paid based on the special assessment for each year the special assessment existed. The limit on the amount of the deferred tax is 10 percent of the full cash value assessment [§ 19 (f) (6)].

MASSACHUSETTS

In 1972, Massachusetts voters approved an amendment to the State constitution permitting the general court to enact laws on the assessment of agricultural or horticultural land at its value in those uses. At the time this bulletin was written, the legislature had not passed implementing legislation [Annotated Laws of Massachusetts, Constitution].

MICHIGAN

In 1973, a bill which applied the circuit breaker principle to the taxation of farmland was introduced in the Michigan legislature. A circuit breaker typically provides for a tax rebate or credit to eligible farmers for that portion of real property taxes which exceeds a given percentage of farm income. Even though the circuit breaker approach is not yet law, we think it is potentially important enough to merit description here. In addition, this bill has elements of a restrictive agreement.

Eligibility

Eligible owners of farmland must be either "natural persons" (i.e., not a corporation), a partnership, an agricultural corporation taxed under Subchapter

S of the Internal Revenue Code of the United States, or joint tenants among family members [Senate Substitute for House Bill 4244, 1973 session, Michigan legislature, § 1 (b)].

A contract may be entered into by an eligible owner of agricultural land and the Michigan department of treasury to keep that land in agricultural use for 10 years [§ 1]. The land must meet one of the following requirements: (1) A farm of 40 or more acres must have been devoted primarily to agricultural or horticultural use during 3 of the 5 preceding years. The farm must continue in this use while in the contract program [§ 2 (a)]. (2) A farm of between 5 and 40 acres devoted primarily to agricultural or horticultural use must have produced a gross income of $100 or more per year per acre during 3 of the preceding 5 years. The farm must continue in this use while in the program [§ 2 (b)]. (3) A farm designated as a specialty farm by the State department of agriculture must have produced a gross income from agriculture or horticulture of $2,000 per year for 3 of the preceding 5 years. The farm must continue in this use while in the program [§ 2 (c)].

Other eligibility requirements are that any noncontiguous land must have been an integral part of farm operations for 3 of the 5 preceding years; no land in residential, commercial, or industrial use (except the farm homestead) may be included; and the land must have adequate drainage and soil depth for agricultural or horticultural operations [§ 2 (e)].

The State department of the treasury must accept an application for a contract unless (1) the land is wholly or partially unsuited for agricultural use as described above, or (2) the land is wholly or partially zoned for high density uses [§ 3].

Contract Provisions

A standard contract is prescribed which includes the following provisions: (1) Only reasonably needed farm structures may be built on the land. (2) Only land improvements reasonably needed for farm operations may be made. (3) The only interests in the land that can be sold will be those which do not hinder farm operations, i.e. scenic, access, or utility easements. (4) For a farm of more than 40 acres, a drop in intensity of use below $10,000 per year gross receipts in 3 out of 5 years will constitute a violation of the contract unless it results from natural disaster; crop, structure, equipment, or livestock loss; a fall in market price; or compliance with Federal production restrictions. (5) If any of these provisions are violated or the ownership is transferred and the new owner fails to enter into the contract, then the applicant will pay a penalty of 100 percent of the current State equalized value of the land and structures in the year the change occurs. If the transfer is by sale, the penalty will be 100 percent of the equalized value or 50 percent of the sales price, whichever is greater [§ 5].

Circuit Breaker

The owner of land and buildings under contract will receive a credit against his State income tax liability equal to the amount by which his real property taxes exceeds 8 percent of household income. The limit on the credit is $3,000 per year [§ 7 (1)].

Special Assessments

Special assessments for sewer, water, lights, or nonfarm drainage may only be imposed on a half acre lot surrounding a dwelling or other nonfarm structure if the land is under contract. Moreover, before the rest of the land under contract may use any improvements financed by special assessments, the owner must pay an amount equal to what would have been paid had the land not been exempted [§ 8 (3)].

MINNESOTA

Minnesota enacted its deferred tax law in 1967 and amended it in 1969 and 1973.

Definitions

Agricultural use land is defined as land from which the owner derives a third of the total family income or from which the total production income is $300 per year plus $10 per tillable acre. The land must be devoted to the production for sale of livestock, dairy products, horticultural and nursery stock, forage, grain, fur-bearing animals, bees, apiary products, etc. [Minnesota Statutes Annotated, § 273.111, Subd. 6].

Private outdoor recreational, open space, and park land for tax deferment purposes includes land devoted exclusively to golf or skiing and other related recreational uses. It must be at least 5 acres in size and either (1) be operated privately and open to the public, (2) be operated by firms for the benefit of their employees and guests, or (3) be operated by private clubs having a membership of at least 50 people [§ 273.112, Subd. 3].

Eligibility

Agricultural use land must be at least 10 acres in size. It must also be either the homestead of the owner or the owner's spouse, siblings, or children, or it must have been in the possession of the owner or his immediate family for at least 7 years prior to application. A family farm corporation, if it meets all other requirements, will be eligible if all stockholders are members of a family related to each other within the third degree of kindred [§ 273.111, Subd. 3].

The owner of the agricultural and private outdoor recreational, open space, and park land must apply to the assessor for the special valuation. Once

application has been approved, it shall continue in effect until the property no longer qualifies [§ 273.111, Subd. 4, 8].

Valuation

In determining agricultural use value, the assessor will not consider any added values resulting from nonagricultural factors [§ 273.111, Subd. 4]. Instead, he will consider its earning potential as measured by its free market rental rate [§ 273.12]. He will note the market value separately and will determine the mill rate applicable to such property.

The value of real estate in the eligible open space uses will be determined only with reference to its value in those uses. The assessor will not consider the value such real estate would have if it were converted to commercial, industrial, residential, or seasonal residential use [§ 273.112, Subd. 4]. The assessor will record the market value of the land separately.

Deferred Taxes

Once property has been valued and taxed as described above, and it is sold or its use changes and the land no longer qualifies, then deferred taxes will be due. The amount will be the difference between taxes paid and those that would have been paid had market value been the sole criterion for assessment. Such taxes will be collected only for the preceding 3 years for agricultural land [§ 273.111, Subd. 9] and 7 years for open space land [§ 273.112, Subd. 7].

MONTANA

In 1957, Montana enacted a law classifying all lands in the State. Agricultural land was graded and each grade was assessed using a rate determined by the State board of equalization. Montana enacted a deferred tax law in 1973.

Eligibility

Land will be eligible for valuation according to its productive capacity each year it meets the following qualifications: (1) it is actively devoted to agriculture, and (2) it is either at least 5 acres in size, and the gross value of its production is at least $1,000 per year, or it produces at least 15 percent of the owner's income. The owner must apply [Montana Session Laws, Chap. 512, § 4].

Valuation

Land which the county assessor has determined to be in agricultural use will be valued according to its productive capacity [Revised Code of Montana, § 84-401] and not according to the best and highest use of neighboring lands [§ 84-429.12.1]. The State department of revenue will provide a general and uniform method of classifying lands. Each class of land will be graded according to its soil and productive capacity [§ 84-429.12].

Deferred Tax

Once land has been valued and taxed under this law, and its use is changed, then it will be liable for a roll-back tax for up to the preceding 4 years [MSL, Chap. 512, § 6]. The amount of the roll-back is determined by multiplying the full and fair value of the land, as reclassified according to its new use, by the number of years in the roll-back and applying the assessment ratio against that product. The resulting figure is multiplied by the average mill levy for the years included in the roll-back period, and the taxes actually paid are then subtracted from it [§ 6] to give the amount of the roll-back tax.

NEBRASKA

Nebraska amended its constitution in November 1972 to enable the legislature to enact laws providing that the value of land actively devoted to agriculture or horticulture would be its value in those uses, without regard to its potential value in other uses. To date, the legislature has not done so [Nebraska Constitution, Art. VIII, § 1].

NEVADA

Nevada presently does not have a differential assessment law on the books. One was enacted in 1961 and later declared unconstitutional by the courts.

The legislature, in its 56th session, passed a resolution to amend Section 1 of Article 10 of the State constitution. This resolution then also passed the 1973 legislature as required. It will now be submitted to the electorate to be voted upon in 1974.

The proposed amendment permits the legislature to classify open space and agricultural real property separately for tax purposes. The legislature will also provide for 7 years' retroactive assessment should land use be changed to a higher use.

NEW HAMPSHIRE

New Hampshire amended its constitution in 1968 to enable the legislature to provide for tax valuations based on use [New Hampshire Revised Statutes Annotated, Pt. 2, Art. 5-B]. Between 1968 and 1973, when new permanent legislation was enacted, New Hampshire had some temporary laws which provided for the taxation of farm and forest land.

The 1973 law, to be effective April 1974, has two parts--deferred taxes and restrictive agreements. The deferred tax is not a true deferred tax but a new tax imposed when land use changes. Nevertheless, it more closely resembles a deferred tax than preferential assessment or a contract or agreement. We

Kinds of State Differential Assessment Laws as of January 1, 1977

	Preferential Assessment 1/	Deferred Taxation 2/	Restrictive Agreements 3/
Alabama			
Alaska		X	
Arizona 4/			
Arkansas	X		
California			X
Colorado	X		
Connecticut		X	
Delaware	X		
Florida	X		X
Georgia			
Hawaii		X	X
Idaho	X 5/		
Illinois		X	
Indiana	X		
Iowa	X		
Kansas 6/			
Kentucky		X	
Louisiana		X 12/	
Maine		X	X
Maryland		X	X
Massachusetts		X	
Michigan			X 7/
Minnesota		X	
Mississippi			
Missouri	X		
Montana		X	
Nebraska		X	
Nevada		X	
New Hampshire		X	X
New Jersey		X	
New Mexico	X		
New York		X 8/	X 8/
North Carolina		X	
North Dakota			
Ohio		X	
Oklahoma 4/			
Oregon		X	
Pennsylvania		X	X
Rhode Island		X	
South Carolina			
South Dakota	X 11/		
Tennessee		X	
Texas		X	
Utah		X	
Vermont			X 10/

--Continued

Kinds of State Differential Assessment Laws as of January 1, 1977.--Continued

	Preferential Assessment 1/	Deferred Taxation 2/	Restricitve Agreements 3/
Virginia 9/.....		X	
Washington.....			X
West Virginia.....			
Wisconsin 6/.....			
Wyoming.....	X		

1/ Preferential Assessment: Eligible Land is assessed at its value in its current use, and there is no penalty if it is later converted to another ineligible use.

2/ Deferred Taxation: Eligible land is assessed at its value in its current use, and a penalty is collected if use of the land changes.

3/ Restrictive Agreements: Local government and landowner agree to restrictions on land use in return for lower property taxes.

4/ Arizona and Oklahoma tax all land according to its current use.

5/ In Idaho agricultural and commercial land is taxed according to current use.

6/ Constitutional amendment. No legislation yet.

7/ Circuit Breaker. Does not explicitly require current use assessment.

8/ New York's deferred tax law is based chiefly on the establishment of agricultural districts, although land not in an agricultural district is eligible for use assessment if the landowner enters into an agreement with the local government.

9/ Local Option.

10/ In addition to a law permitting restrictive agreements, Vermont also allows contracts between local governments and farmers to fix the tax rate on real and personal property.

11/ South Dakota limits preferential assessment to farmland in independent school districts.

12/ Effective 1978.

Note: Different analysts classify these laws differently. For example, some include South Carolina, which I consider a classified property tax. Others do not include the Michigan circuit breaker. Hence, not too much importance should be attached to the total number of States with these laws, as shown on this sheet.

Thomas F. Hady
3/15/77

have, therefore, classified it as a deferred tax law. The restrictive agreements are based on the acquisition of discretionary easements by local government.

Purpose of this law is to preserve open space in the State by providing a healthful and attractive outdoor environment for work and recreation by maintaining the character of the State's landscape and by conserving the land, water, forest, and wildlife resources. The means for preserving open space are current-use assessment and the acquisition of discretionary easements [§ 79-A:1].

Current Use Taxation

Definitions

Farmland means land devoted to agriculture or horticulture. The commissioner of agriculture will develop further criteria which the current use advisory board will adopt [§ 79-A:2 III].

Flood plain means undeveloped flood plains as determined by the flood plains commission and the current use advisory board [§ 79-A:2 IV].

Forest land means any land receiving silvicultural treatment. The State forester and current use advisory board will develop further criteria [§ 79-A:2 V].

Open space land means any farmland, forest land, wetland, recreational land, flood plain, or wild land and any undeveloped or unoccupied land that is so designated by action of a town or city for a period of at least 10 years. Recreational land means any undeveloped land open to public recreational use without entrance fee. Further criteria are determined by the State director of parks and the director of fish and game and adopted by the current use advisory board. Wetland means a marsh, swamp, or bog subject to flooding including the surrounding shore and including any soil designated as poorly drained by the national cooperative soil survey or as determined by criteria developed by the current use advisory board. Wild land means any unimproved land upon which there are no detrimental structures and on which the owner is not interfering with natural ecological processes as determined by the criteria of the current use advisory board [§ 79-A:2 VII, X, XI, XII].

Eligibility

The owner must apply for the special classification to the local tax officials. Each year the tax officials will determine if lands previously classified under this act have been reapplied for or have undergone a change in land use [§ 79-A:5 II, IV].

Valuation

The assessing officials will appraise open space land at valuations based on the current use values established by the current use advisory board [§ 79-A:5 I].

Land Use Change Tax

Land which has been classified open space land as described above will be subject to a land use change tax when it no longer qualified for open space assessment. The amount of the tax will be 10 percent of its full and true value in money. This tax is paid in addition to the annual real estate tax [§ 79-A:7 I].

Current Use Advisory Board

This board is established to function within the tax commission. It will be made up of eleven appointed members: assessing officials, members of the State legislature, commissioner of agriculture, commissioner of the department of resources and economic development, dean of the college of agriculture, and other designated officials. Their duties are to establish a schedule of criteria and values for open space land and to review it yearly. They may also recommend changes in the administration of this act [§ 79-A:3, 4].

Discretionary Easements

Eligibility

An owner of open space land is eligible to apply for a discretionary easement if: (1) the open space land meets the requirements listed above or (2) the open space land does not meet the requirements, but the owner wants to keep his land in a use consistent with the purposes of the law. The owner will apply to the town planning board or selectmen for a permit to convey a discretionary easement to the town. If the town planning board or the selectmen determine that the proposed use of the land is consistent with open space objectives, then they will recommend that the town acquire the easement [§ 79-A:15, 16].

Having received a permit to convey a discretionary easement, the owner applies to the selectmen or mayor and council to grant an easement to the town not to subdivide, develop, or otherwise change the use of the land to an intensive use inconsistent with the purposes of the law. The easement becomes a burden on the land [§ 79-A:17].

Valuation

The discretionary easement will include a current use assessment category or it will fix the assessment for the term of the easement. In the latter case, the fixed assessment cannot exceed the highest per acre valuation of any category of open space land established by the current use advisory board. The period of the easement is for at least 10 years [§ 79-A:19].

Release from Easement

A landowner may apply to be released from the easement if he or she can demonstrate extreme personal hardship. In order to be released, the owner will

have to pay the following amount: if he or she is released during the first half of the term of the easement, 12 percent of the full value assessment; if he or she is released during the second half, 6 percent of the full value assessment [§ 79-A:19 I (a), (b)].

NEW JERSEY

New Jersey amended its constitution in 1963 to enable the legislature to provide for the assessment of agricultural and horticultural land at its value in those uses. The following year the legislature enacted "The Farmland Assessment Act of 1964," a deferred tax law. It was slightly amended in 1970 and 1973.

The constitution enables the legislature to provide that land in agricultural or horticultural use for at least the 2 preceding years and of at least 5 acres size will be assessed according to its value in agriculture [New Jersey Statutes Annotated, Constitution, Art. 8, § 1, paragraph 1].

Definitions

Land is deemed to be in agricultural use if it is devoted to production for sale of plants and animals useful to man; forages and sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products, etc.

Land is deemed to be in horticultural use if it is devoted to production for sale of fruits of all kinds, grapes, nuts, berries, vegetables, and nursery products.

Both of these definitions include land which is in a Federal soil conservation program [§ 54:4-23.3, 54:4-23.4].

Eligibility

Land is deemed actively devoted to agricultural or horticultural use if the gross sales produced from these uses on the first 5 acres averaged $500 per year during the previous 2 years. For all acreage above 5 acres, an aggregate average gross sales of $5 per acre on farmland and $0.50 per acre on woodland and wetland is required during the previous 2 years, or there must be clear evidence that such anticipated average yearly gross sales will be attained within a reasonable period of time [§ 54:4-23.5]. The owner must apply for special assessment [§ 54:4-23.6]. Eligibility of land will be determined for each tax year separately [§ 54:4-23.13].

Valuation

In determining the value of the land, the assessor will consider, in addition to his own experience, knowledge, and judgment, any evidence of agricultural and horticultural capability that is indicated by soil survey data, and the recommendations of any county or State committee established to assist the assessor [§ 54:4-23.7].

State Farmland Evaluation Advisory Committee

The members of this committee will annually determine and publish a range of values for each of the classifications of land in agricultural and horticultural use in the various areas of the State. They may use available soil survey data and such other indicators of agricultural capability as they deem pertinent [§ 54:4-23.20].

Roll-Back Taxes

Once land use changes, then roll-back taxes will be due for the current and 2 preceding years. In determining the amount of roll-back taxes, the assessor will ascertain: (1) the full and fair value of the land under the valuation standard applicable to other land in the taxing district; (2) the amount of the land assessment by multiplying the full value by the county percentage level; (3) the amount of the additional assessment by subtracting the special assessment from the amount determined above; and (4) the amount of the roll-back tax for that particular tax year by multiplying the amount of the additional assessment by the general property tax rate for that year [§ 54:4-23.8].

NEW MEXICO

New Mexico amended its constitution in 1971 to enable the legislature to enact laws using different methods to tax different classes of property. The constitution now provides that taxes will be uniformly and equally levied in the same class. Different methods may be used to value different kinds of property [New Mexico Statutes, Constitution, Art. VIII, § 1].

The law, which preceded this amendment to the constitution, was enacted in 1967. The law provides for preferential assessment of agricultural land.

Definitions

Agricultural use of the land means land that is devoted to the production for sale of plants, crops, trees, forest products, or animals useful to man, and land that is in a Federal soil conservation program. Gross sales derived from agricultural use of the land must have averaged $100 per year during the 2-year period preceding the tax year, or there must be clear evidence of anticipated yearly gross sales of at least $100 per year [§ 72-2-14.2]. The land must have been used primarily for agriculture for at least 5 years preceding the tax year [§ 72-2-14.1].

Grazing land means land which is used substantially in the raising of livestock and has been so used for the last 10 years.

Assessment

The value of such agricultural land is based on the capacity of the land to produce agricultural products [§ 72-2-14.1].

The value of different classes of grazing lands is determined by the State tax commission. Lands of the same carrying capacity are classified and valued equally. The commission is to use the criteria of number of head per section which such land will support reasonably. Value of the lands is to be reduced because of drought or economic conditions, as necessary.

NEW YORK

New York enacted an agricultural value assessment ceiling law in 1971 and amended it in 1972. We have classified part of it as a deferred tax law and part as restrictive agreements. The portion classified as a deferred tax law differs from the typical deferred tax in having a strong element of State and local planning involved. It is based chiefly, though not exclusively, on the establishment of agricultural districts, which may be created by neighboring cooperating farmowners with the approval of local and State authorities. The law also has a section providing for State initiative in forming districts of unique agricultural land. This section is coupled with a State-aid provision whereby the State will make up 50 percent of the revenue lost annually by the local taxing jurisdictions because of State-initiated agricultural districts.

Land not in agricultural districts may be differentially assessed only if the landowner enters into an agreement with the local government to keep the land in agricultural use for 8 years into the future. Hence, this portion of the law constitutes a restrictive agreement.

The New York law also differs from the typical differential assessment law in not permitting classification of real property for assessment and tax purposes. The agricultural value assessment ceiling really constitutes a partial exemption from property taxation for eligible farmland.

Definitions

Viable agricultural land includes land highly suitable for agricultural production and upon which agriculture will continue to be feasible if real estate taxes, farm use restrictions, and speculative activities are limited to levels such as those in commercial agricultural areas not influenced by neighboring urban development [Agriculture and Markets Law, Art. 25AA, § 301. 1]. Unique and irreplaceable agricultural land includes land which is uniquely suited for the production of high value crops such as fruits, vegetables, and horticultural specialties [§ 301. 2].

Agricultural production means the production for commercial purposes of crops, livestock, and livestock products, but excludes land used to process or retail such products [§ 301. 3].

Landowner Initiative in Creation of Agricultural Districts

Any owner or owners of land who together own a specified minimum of county land may submit a proposal to the county legislative body to create an

agricultural district. The proposal will be reviewed by the county planning board, the agricultural districting advisory committee [§ 302], and a public hearing. The proposal will be judged on the basis of viability of farming in the area, extent of other land uses, and patterns of county development. The county legislative body, upon approval of the proposal, may include adjacent viable farmland and exclude nonviable and nonfarm land [§ 302, 303. 1-6]. The proposal is then submitted to the State commissioner of environmental conservation, the agricultural resources commission, and the office of planning services The first reviews it for consistency with State environmental plans, the second for whether the district consists chiefly of viable agricultural land, and the third for consistency with State comprehensive plans. If these officials approve the proposal, and once the public hearing is concluded, then the agricultural district becomes effective.

Once the agricultural district has been created, it will be reviewed every 8 years. The county legislative body may revise the boundaries or discontinue the agricultural district altogether if it is no longer predominantly viable agricultural land [§ 303. 7-8].

Other Ways to Create Agricultural Districts

The commissioner of agriculture may establish an agricultural district for unique and irreplaceable agricultural land [§ 304].

Assessment of Land in Agricultural Districts

A landowner is eligible for agricultural value assessment if: the land is in agricultural production; it is at least 10 acres in size; and for each of the preceding 2 years it produced for sale a gross average sales value of $10,000 or more. The owner must apply yearly [§ 305. 1 a].

Determination of Agricultural Value

Agricultural value per acre shall be determined yearly by the State board of equalization and assessment from statistics of the agricultural resources commission and the U.S. Department of Agriculture [§ 305. 1 c].

The assessor will use the average value per acre to determine the amount of assessment for all farmlands eligible for agricultural use assessments. The average value is multiplied by the number of acres used in agricultural production, and a special equalization rate is applied to the result. This final result is the agricultural value ceiling. The value of land in agricultural production which is in excess of the agricultural value ceiling is not subject to real property taxation [§ 305. 1 b, d].

Conversion of Land in Agricultural District to Another Use

When land is converted to use other than agricultural production, roll-back taxes will be collected for the past 5 years. Roll-back taxes will be based on the value of the property in excess of the agricultural value ceiling [§ 305. 1 e].

State Assistance to Agricultural Districts

The State will provide assistance to a State-initiated agricultural district equal to one-half the revenue lost because of the special agricultural assessment. The amount of assistance will be reduced by the amount of any roll-back taxes collected that tax year [§ 305. 1 f].

Limitation on Local Regulation

The statute provides that local government will not unduly restrict or regulate farm structures or practices [§ 305. 2]. Any significant exercise of eminent domain in an agricultural district must be approved by the commissioner of environmental conservation [§ 305. 4]. The power of a public service district to impose benefit levies or special ad valorem levies on agricultural district land is limited to the one-half acre surrounding the dwelling [§ 305. 5].

Agricultural Value Assessments of Land Not in Agricultural Districts

If land is not in an agricultural district, but is in agricultural use, is at least 10 acres in size, and produced the preceding year a gross sales value of $10,000 or more, and if the owner will sign a form committing the land to agricultural use for the next 8 years, then the land is eligible for agricultural value taxation [§ 306. 1]. Commitments must be filed annually. Converting farmland to another use during the 8 years will be considered a breach of commitment and the property owner will pay, in addition to taxes, an amount equal to twice the taxes due on all the committed land in the following year [§ 306. 2].

NORTH CAROLINA

North Carolina enacted a deferred tax law in 1973, effective January 1, 1974. Under this law, individually owned agricultural, horticultural, and forest land is designated as a special class of property for tax purposes.

Definitions

Agricultural land means land constituting a farm unit, including contiguous woodland and wasteland, which is engaged in the commercial production of crops, plants, or animals under a sound management program [General Statutes of North Carolina, § 105-277.3 (2)].

Horticultural land means land constituting a horticultural unit actively engaged in the commercial production of fruits, vegetables, nursery, or floral products under a sound management program [§ 105-277.3 (3)].

Forest land means land constituting a forest unit actively engaged in the commercial growing of trees under a sound management program [§ 105-277.3 (4)].

A sound management program means a program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement [§ 105-277.3 (5)].

Present use value means the estimated price at which the property would change hands between a willing and financially able buyer and a willing seller under these assumptions: (1) neither of them is compelled to buy or sell, (2) they both know the capability of the property to produce income, and (3) the present use of the property is its highest and best use [§ 105-277.3 (6)].

Individually owned land means land owned by a "natural person" or persons (i.e., not a corporation) [§ 105-277.3 (7)].

Eligibility

Agricultural and horticultural land is eligible to be designated special class of property if it is individually owned land, is at least 10 acres, and produced for sale agricultural and horticultural products which brought an average gross income of $1,000 per year for the preceding 3 years [§ 105-277.2 (a) (1), (2)].

Forest land is eligible if it is individually owned land and is at least 20 acres [§ 105-277.2 (a) (3)].

Moreover, all three classes of land must be the owner's place of residence or must have been owned by one family for the 7 years preceding [§ 105-277.2 (b) (1), (2)]. Land in one of these classes having a greater value for other uses will be eligible for present use value taxation once the owner applies to the county tax supervisor. He must file application annually [§ 105-277.4 (a)]. The tax supervisor will determine if the land meets the qualifying criteria.

Valuation

If the tax supervisor approves the application, then he will appraise the property according to its present use value. Once a present use value is established, it will continue in effect (except for revisions necessitated by acreage and operations changes) until all property in the county is revalued, at which time a new present use value will be established [§ 105-277.4 (b)].

The tax supervisor is to prepare a schedule of land values, standards, and rules which will result in the appraisal of eligible property at its present use value [§ 105-277.6]. The State property tax commission will insure uniformity among counties by preparing rules, regulations, and standards to be used by county tax officials [§ 105-277.7].

Deferred Taxes

The difference between taxes paid on the present use basis and taxes which would have been payable in the absence of such a classification will be a lien on all the taxpayer's real property and so noted in the tax supervisor's records.

Should the owner sell the land or should the property lose its eligibility, then deferred taxes for the current year and the preceding 5 years will be due, plus the interest due on unpaid taxes in general [§ 105-360], calculated from the date each year's tax was deferred [§ 105-277.4 (c)]. The owner is responsible for notifying the tax supervisor of a change in ownership or use. If he fails to do so, he is subject to an additional 10 percent penalty on deferred taxes [§ 105-277.5].

NORTH DAKOTA

In 1973, North Dakota enacted a very limited preferential assessment law. Agricultural lands within corporate limits will be classified and valued as agricultural property. Such valuation will be uniform with the assessed value of neighboring agricultural land not within corporate limits [North Dakota Century Code, § 57-02-27]. Because of the limited applicability of this law, we have not included North Dakota among the States with preferential assessment laws earlier in this bulletin.

OHIO

The Ohio legislature amended its constitution in November 1973 to provide for deferred taxation of farmland. The amendment enabled the State legislature to pass laws providing that land devoted exclusively to agricultural use will be valued for real property tax purposes according to its current value for agricultural use. It may also provide for the collection of deferred taxes amounting to the difference between taxes collected according to agricultural use, and taxes which would have been collected had the land been valued like all other land [Amended House Joint Resolution No. 13, 110th General Assembly, Regular Session 1973-1974].

OREGON

Oregon has a deferred tax law. The method for determining deferred taxes depends on whether the farmland is unzoned or zoned agricultural. The law was enacted in 1963 and amended in 1967, 1969, 1971, and 1973.

Eligibility and Definitions

Farm use means the current employment of land, including the land under farm buildings, for the purpose of obtaining a profit in money by raising, harvesting, and selling crops or by the feeding, breeding, management, and sale of livestock, poultry, and other specified uses. It includes land used for preparation and storage of products for market [Oregon Revised Statutes, § 215.203 (2) (a)].

Unless the farm grosses $500 per year for 3 of the 5 preceding calendar years, it will not be considered as being used to make a profit in money. In

case of question, the owner must bear burden of proof [§ 215.203 (2) (b)]. If not located in a farm use zone, the farm must have been in farming for the 2 previous years [§ 308.370 (2)]. Furthermore, "...the Department of Revenue shall provide by regulation for a more detailed definition of farm use" which is in accordance with the definitions above [§ 308.380 (1)]. All farmland must meet these criteria of farm use in order to be eligible for differential assessment. The procedures for differential assessment depend on whether farm use land is zoned as such or whether it is unzoned.

Zoned Farm Use Land

The zoning code provides that "Farm Use Zones shall be established only when such zoning is consistent with the overall plan of development of the county" [§ 215.203 (1)] and when the farms meet the definitional criteria above. Land in areas which are zoned for farm use and its compatible uses, if it meets the definition of farm use, is automatically eligible for special assessment and farmers need not apply [§ 308.370 (1)]. The special assessment will continue until the assessor discovers it is no longer being used as farmland or until the owner requests its removal from a farm use zone [1973 Regular Session, Senate Bill 101, New Section 5].

No State agency, city, county, or political subdivision may unreasonably restrict or regulate farm structures or accepted farming practices if the farms are located in an exclusive farm-use zone [1973 Regular Session, Senate Bill 101, New Section 8].

Unzoned Farm Use Land

On the other hand, farm use land which is not in a farm use zone is eligible upon meeting the definitional criteria of the tax statute. Farmers wanting the special assessment on land not in a farm use zone must apply to the county assessor for it [§ 308.370 (2)].

Valuation

The Oregon code provides two methods for valuing farm-use land:

1. Farm property is to be assessed for ad valorem purposes based on market data information for comparable uses in bona fide farming. Comparable use is determined when the purchaser meets the "prudent investor for farm use" test [§ 308.345].

2. When comparable sales figures are not available, the assessor may utilize an income approach and the capitalization rate shall be that rate used for appraising nonagricultural commercial land [§ 308.345].

Deferred Taxes and Penalty

If land in a farm use zone becomes disqualified for special assessment, the assessor will levy a penalty equal to, at most, ten (depending on the number of years the land was so zoned) times the amount by which the taxes would have been larger had it not received the special assessment [1973 Regular Session, Senate Bill 101, New Section 6].

For unzoned agricultural land, the assessor will note on the tax roll the "potential additional tax liability," which would be the difference between taxes collected if there were no differential assessment and taxes collected under differential assessment [ORS, § 308.390, 308.395 (1) (a)].

If unzoned land which has been assessed as farm use land subsequently becomes diverted from farm use or loses its eligibility for the special assessment, the owner must so notify the assessor. Additional taxes will be due in an amount equal to the potential tax liability for up to the previous 10 years plus 6 percent interest calculated from the year taxes were deferred [§ 308.395 (1) (a) (b)].

If the owner should fail to notify the assessor, the assessor will determine the date that notice should have been given. Then he will assess a penalty against the land. The total will equal deferred taxes for up to 10 years, plus 6 percent interest calculated from the year the taxes were deferred, plus the additional taxes which would have been collected had notice been properly given when land use changed, plus interest, plus a 20 percent penalty levied on the latter tax portion (excluding interest) [§ 308.395 (2)].

If unzoned farm use land becomes zoned farm use land, then the potential additional tax liability recorded for unzoned farm use land is cancelled [§ 308.395 (4)]. This, however, does not exempt the land from the laws (and taxes and penalties) governing farm use zones.

Other Taxes

With some exceptions, land qualified for farm use assessment will be exempt from the following assessments and levies in these special tax units and districts: sanitary districts, domestic water supply districts, and water and sanitary authorities. The chief exception is that benefit assessments may be imposed on the home site in the parcel of farm use land [1973 Regular Session, Senate Bill 101, New Section 7].

PENNSYLVANIA

Pennsylvania enacted a restrictive agreements law in 1966. In addition, it proposed to amend its constitution in 1973 to permit the general assembly to provide standards and qualifications for forest reserves, agricultural reserves, and land actively devoted to agriculture.

Pennsylvania

The 1966 statute is based on county and municipal planning and on restrictive covenants with landowners.

Definitions

Farmland means any tract(s) of land in common ownership of at least 20 acres used to raise livestock or grow crops [Act No. 254 of 1972, § 1 (1)].

Forest land means any tract(s) of land in common ownership of at least 50 acres used to grow timber crops [Public Law 1292, § 1 (2)].

Water supply land means any land used to protect watersheds and the water supply, such as land used to prevent floods and soil erosion, to protect water quality, and to replenish surface and ground water supplies [PL 1292, § 1 (3)].

Open space land means any land including farm, forest, and water supply land, in common ownership, of at least 10 acres, and upon which site coverage by structures, roads, and paved areas does not exceed 3 percent. Open space uses include land, the restriction of which would: (1) conserve natural or scenic resources, such as soils, beaches, streams, wetlands, and tidal marshes; (2) enhance the value of neighboring parks, forests, wildlife preserves, nature reservations, or other public open spaces; (3) increase public recreational opportunities; (4) preserve sites of historic, geologic, or botanic interest; (5) promote orderly urban development; or (6) otherwise preserve open space without structures, roads, or paved areas exceeding the 3 percent site coverage limit [Act No. 254 of 1972, § 1 (4)].

Planning Requirements

No land will be subject to this act unless designated farm, forest, water supply, or open space land as part of a regional, county, or municipal plan [Act No. 254 of 1972, § 2].

Covenants

Certain classes of counties are authorized to enter into covenants with landowners of farm, forest, water supply, and open space land in order to preserve the land as open space. The county will covenant that the real property tax assessment, for a period of 10 years, will reflect the fair market value of the land as restricted by the covenant [Act No. 254 of 1972, § 3]. The covenant will be renewed annually unless the landowner or the government notify one another otherwise [PL 1292, § 4].

Breach of Covenant

If, during the term of the covenant, the landowner should alter the use of the land, then he shall pay additional taxes. This amount will be equal to the difference between the taxes actually paid and the taxes which would have been paid without the covenant, plus compound interest at 5 percent [PL 1292, § 6].

RHODE ISLAND

In 1968, Rhode Island amended its general laws to provide for the taxation and preservation of farm, forest, and open space land. Should land employed in such uses be later converted to a higher use, then deferred taxes will be due.

Definitions

Farmland means a tract of land constituting a farm unit [General Laws, § 44-27-2 (a)].

Forest land means that a tract of land bears a dense growth of trees and is either self-perpetuating or, if dependent on the replanting of trees in stands of closely growing timber, is maintained under a forest working plan approved by the division of conservation [§ 44-27-2 (b)].

Open space land means an area of land including farms and forests, the preservation of which would: (1) enhance the conservation of natural or scenic resources; (2) protect natural streams or the water supply; (3) promote conservation of soils, beaches, and wetlands; (4) enhance the value of parks, forests, and wildlife preserves; (5) enhance public recreational opportunities; (6) preserve historic sites; and (7) promote orderly urban development [§ 44-27-2 (c)].

Eligibility of Farmland

An owner of land may apply for its classification as farmland to the city or town assessor. The assessor will determine whether the land is indeed farmland by using the following criteria: the acreage of such land, the portion of the acreage in actual use for farming, the productivity of such land, the gross income from the land, the nature and value of the equipment used, and the extent to which the tracts are contiguous [§ 44-27-3].

Eligibility of Forest Land

The owner must apply for designation of his land as forest land to the chief of the division of conservation. If the chief determines that it is forest land, he will notify the owner and the appropriate local assessor. Then the owner must apply to his local assessor for classification and assessment as forest land. At some later time the assessor may ask the chief of the division of conservation to review the designation of any forest land [§ 44-27-4].

Eligibility of Open Space Land

An owner must apply to his local assessor for classification and assessment of his land as open space land. The assessor will determine if the land is indeed open space land [§ 44-27-5].

Assessment

The assessor, in determining the full and fair cash value of farmland, forest, or open space land will consider only those factors which relate to its use, without regard to neighborhood land use of a more intensive nature [§ 44-5-12].

Roll-Back Taxes

When land which has been classified farm, forest, or open space and assessed as such is changed to another use, it becomes subject to roll-back taxes. The amount due will be equal to the difference between the taxes which would have been paid had the land been valued as any other land in the city or town and the taxes which were paid under the special assessment. The amount will be due for the current year and the preceding 2 years [§ 44-5-39].

SOUTH DAKOTA

South Dakota amended its constitution in 1966 to allow preferential assessment of agricultural property in school districts [South Dakota Compiled Laws, Constitution, Art. VIII, § 15]. In 1967, the present statute was enacted. It provides for the classification of all property within independent school districts as agricultural or nonagricultural [§ 10-6-31].

Definition

Agricultural property includes all property used exclusively for agricultural purposes, such as tilled and untilled land, buildings and other improvements, and livestock and machinery located and used on such land [§ 10-6-31].

Eligibility

The provisions of this law are restricted to land which has been used primarily for agricultural use for at least the 5 preceding years [§ 10-6-33.1].

Valuation

Factors to be used in determining the value of agricultural land will be: (1) the capacity of the land to produce agricultural products, (2) soil terrain and topography, (3) the present market value of this land as agricultural land, (4) the character of the location, and (5) other applicable factors [§ 10-6-33.1] Capacity to produce agricultural products will be determined by average yields for cropland and average acres per animal unit for grazing land. The averages will be based on a 10-year period [§ 10-6-33.2].

TEXAS

Texas amended its constitution in 1966 to provide for deferred taxes.

Definition

Agricultural use means the raising of livestock, the growing of crops, fruit, flowers, etc., with the further criteria that the land be owned by a "natural person" (i.e., not a corporation), that he be in this business for profit, and that this business be his primary occupation and income source [Texas Statutes Annotated, Constitution, Art. VIII, § 1-d (a)]. The land must have been in agriculture exclusively and continuously for the 3 preceding years [§ 1-d (e)].

Eligibility

The farmer must apply and file an affidavit for each assessment year he wishes to qualify. The tax assessor shall determine whether the land meets the definitional criteria [§§ 1-d (b), (c), (d)].

Valuation

Qualifying land shall be assessed considering only those factors pertinent to agricultural use.

Change in Land Use

Every year, for land designated in agricultural use, the tax assessor will note on the tax rolls what the land would have been valued if it were not in agricultural use. If such land is subsequently put into another use, it will be subject to a tax equal to the difference between its nonagricultural and its agricultural use valuation for the preceding 3 years [§ 1-d (f)].

UTAH

Utah amended its constitution in 1969 to allow the legislature to enact laws pertaining to agricultural use assessment. Accordingly, the legislature enacted the Greenbelt Act in 1969 and amended it in 1973. It provides for deferred taxation.

Definition

Agricultural use means land devoted to the raising of plants and animals useful to man such as: forages and sod crops, grain and feed crops, dairy animals, poultry, livestock, and other specified uses, and land in a cropland retirement program of the State or Federal government [Utah Code Annotated, § 59-5-88].

Eligibility

The land must have been actively devoted to agricultural use for at least 5 successive years immediately preceding the current tax year. The land must not be less than 5 contiguous acres [§ 59-5-89], but the acreage limitation may

be waived by the tax commission if the owner obtains 80 percent of his income from the land [§ 59-5-87 (a)]. The land must have produced an average gross sales of at least $250 per year over the 5 preceding years. The owner must apply [§ 59-5-89 (2), (3) (a)]. Once use assessment has been applied to a tract of land, the owner need not reapply annually. If land use changes, he must notify the county assessor, or be subject to a 100 percent penalty computed on the roll-back taxes [§ 59-5-89 (3) (c)].

Valuation

The tax assessor in valuing the eligible land will consider only those indicators of value which the land has for agricultural use [§ 59-5-90].

Roll-Back Taxes

Once land has been assessed under this act, it loses its eligibility for such assessment because of a change in land use, then it shall be liable for roll-back taxes for up to the previous 5 years. The amount of the roll-back tax is the difference between the taxes paid while assessed under the act and the taxes which would have been paid if not assessed under the act [§ 59-5-91].

Farmland Evaluation Advisory Committee

This committee is established to review the several classifications of land in agricultural use in the various areas of the State and to recommend a range of values for each of the classifications to the State tax commission [§ 59-5-101].

VERMONT

Vermont enacted a differential assessment law in 1969. It is based on the State's control of land use. Two different methods are used: (1) the acquisition by the State of various rights and interests in the land, with the landowner being taxed according to the remaining rights and interests; and (2) contracts between the local government and a farmer to fix the rates of taxation on real and personal property. We have classified it in the restrictive agreements category.

Method I

The owner of real property may sell or donate that property or any right or interest therein to a municipality or department of the State if the Vermont planning council approves it [Vermont Statutes Annotated, Title 10, § 6302].

The legislative body of a municipality or department determines the types of rights and interests it will be able to acquire [§ 6303 (b)].

Once the rights and interests in real property have been reconveyed or leased back to a person by a municipality or department, the use of that real property may not be changed unless the appropriate legislative body agrees to the change.

The owner of any remaining right or interest in the land shall be taxed only according to the fair market value of the remaining right or interest [§ 6306 (b)]. The department of taxation, the department acquiring a right or interest in the land, and the owner shall cooperate in determining fair market value [§ 6306 (b)].

Any arrangement for conveyance of rights or interests in real property less than fee simple shall contain a time limitation [§ 6308].

Method II

A second portion of the Vermont Code provides that municipal corporations may enter into contracts with farmers and new industrial and commercial establishments to fix and maintain the value and tax of real property for a period not to exceed 10 years [Title 24, § 2741].

VIRGINIA

Virginia amended its constitution in 1970 and enacted a law in 1971 to provide for local government option for deferral of taxes. The law was amended in 1973.

Definitions

Real estate in agricultural use means real estate devoted to the bona fide production for sale of plants and animals useful to man. Uniform standards will be prescribed by the State commissioner of agriculture and commerce. Land in a Federal soil conservation program may be included [Code of Virginia, § 58-769.5 (a)].

Real estate in horticultural use means real estate devoted to the bona fide production for sale of fruits, vegetables, nursery products, etc. Uniform standards will be prescribed by the commissioner of agriculture and commerce. Land in a Federal soil conservation program may be included [§ 58-769.5 (b)].

Real estate in forest use means land which is planted with trees in such quantity and spaced and maintained to meet the standards of the department of conservation and economic development [§ 58-769.5 (c)].

Real estate in open space use means land used for park or recreational purposes, the conservation of land and other natural resources, floodways, historic or scenic purposes, and for guiding community development. Uniform standards will be prescribed by the director of the commission of outdoor recreation [§ 58-769.5 (d)].

Eligibility of Cities, Counties, and Towns

In order for a city, county, or town to adopt a deferred tax ordinance, it must have adopted a land use plan. The ordinance must provide for at least one

of the four classifications of land: agricultural, horticultural, forest, and open space [§ 58-769.6].

Eligibility of Agricultural or Horticultural Land

Property owners must submit an application for use assessment. A fee may be required at time of application [§ 58-769.8]. The local assessor will determine the eligibility of real estate for those classifications in the local ordinance: agricultural, horticultural, forest, or open space land. He will use the criteria set by the commissioner of agriculture and commerce, the director of the department of conservation and economic development, or the director of the commission of outdoor recreation [§ 58-769.7 (a), § 58-769.12].

Moreover, land in agricultural, horticultural, or open space use must be at least 5 acres in size and forest use land must be at least 20 acres [§ 58-769.7 (b)]. Land which has been valued, assessed, and taxed under such an ordinance will continue to be so treated as long as it remains in its classified use [§ 58-769.8].

Valuation

The assessor, for land classified as agricultural, horticultural, forest, or open space will consider only those indicators of value which the real estate has for agriculture, horticulture, forest, or open space use. In addition to its own judgment, experience, and knowledge, the assessor will consider evidence of land capability and recommendations of land value made by the State land advisory committee [§ 58-769.9 (a)].

The local commissioner of revenue or assessor will note both the fair market value and the use value in the land book records [§ 58-769.9 (d)].

Roll-Back Taxes

If land use changes to a nonqualifying use, then roll-back taxes, equal to the difference between tax based on fair market value and tax based on use value, will be due for up to 5 years preceding the year of the change plus interest of 6 percent per annum [§ 58-769.10].

State Land Evaluation Advisory Committee

The committee shall determine and publish a range of suggested values for each U.S. Soil Conservation Service land capability classification. The committee will also submit recommended ranges of values for each locality having an ordinance. The recommendations will be based on productive earning power determined by capitalization of warranted cash rents or by the capitalization of incomes of like real estate in the locality or a reasonable area of the locality [§ 58-769.11].

WASHINGTON

Washington amended its constitution in 1968 to allow current use assessment of farmland, timberland, and other open space lands. A law detailing the methods of differential assessment was enacted in 1970 and amended in 1973. This law includes elements of both deferred tax laws and restrictive agreements, but we have classified it in the latter group.

A second part of the law, enacted in 1971, provides authority for the State to acquire the fee, development rights, or easement to protect and preserve selected open space, farm, and timber land. Taxes will be levied in accordance with the current use of the land.

Agreements

Definitions

Farm and agricultural land means either (a) land in contiguous ownership of 20 acres or more devoted chiefly to the production of livestock of agricultural commodities for commercial purposes; or (b) any parcel of land 5 acres or more, but less than 20 acres, devoted primarily to agricultural uses which has produced a gross income of at least $100 per acre per year for at least 3 out of the 5 preceding years; or (c) any parcel of land of less than 5 acres devoted primarily to agricultural use which has produced a gross income of $1,000 per year for 3 of the 5 preceding years [Revised Code of Washington, § 84.34.010].

Open space land means (a) land so designated in an official comprehensive land use plan and zoned accordingly, or (b) any land area whose preservation would (1) conserve and enhance natural or scenic resources; (2) protect streams or the water supply; (3) promote the conservation of soils, wetlands, beaches, or tidal marshes; (4) enhance the value to the public of neighboring parks, forests, wildlife preserves, or other open space; (5) enhance recreational opportunities or preserve historic sites; or (6) retain in its natural state land located in an urban area, where the land is at least 5 acres in size and is open to public use [§ 84.34.020 (1)].

Timberland means contiguously owned land of 5 or more acres devoted primarily to the growth and harvest of forest crops [§ 84.34.020 (3)].

Eligibility

Applications for classification as agricultural land are made to the county assessor who approves or denies them with due regard to all relevant evidence [§ 84.34.030]. Application for open space or timberland classification is made to the county legislative authority which may weigh the benefit to the general welfare from preserving the current use of the land against the loss in tax revenue. It may also consider whether current use fulfills the stated definitions of open space or timber land [Chapter No. 212, Laws of 1973, New Sections 4 and 5].

Definition and Eligibility

Agricultural land for assessment purposes is land which is presently used to obtain a profit by raising, harvesting, and selling crops or by the feeding, breeding, management, and sale of livestock [Wyoming Statutes, § 39-82 (b) (i)]. Land must have been so used for 2 years previous to agricultural assessment. Agriculture must be its primary use.

Assessment

Eligible land will be assessed according to its value in its current use, and its capacity in agricultural use. Capacity will be based on average yields of lands of the same classification under normal condition [§ 39-82 (c)]. However, until 1977, there will be no reduction of assessed valuation of agricultural lands below the levels for 1971 and 1972.